

APPENDIX REFERRED TO IN GAZETTE NOTIFICATION

No. 3534.

A BILL

*intituled*

An Enactment to consolidate and amend the law relating to Civil Procedure.

IT is hereby enacted by the Rulers of the Federated Malay States in Council as follows:

PRELIMINARY.

1. (i) This Enactment may be cited as "The Civil Procedure Code, 1917," and is generally referred to hereinafter as "this Code," and shall come into force on the

Short title and commencement.

(ii) Upon the coming into force of this Code the Enactments mentioned in the first schedule shall be repealed to the extent specified in the last column of the said schedule; provided that all declarations by the High Commissioner, scales of allowances for the subsistence of judgment-debtors, appointments of and scales of remuneration for official receivers, exemptions of persons of rank from personal appearance in Court, and rules and forms made or prescribed under any Enactment hereby repealed, which were in force immediately prior to the commencement of this Code shall, so far as may be consistent with the provisions of this Code, be deemed to have been made or prescribed under this Code.

Repeal.

(iii) Upon the coming into force of "The Bankruptcy Enactment, 1912," Chapter XXIII of this Code shall be repealed.

(iv) Any suit or matter pending at the time of the coming into force of this Code shall, so far as circumstances permit, be continued and proceeded with under the provisions of this Code in the same manner in every respect as if the same had been originally instituted after the commencement of this Code, and in any such suit or matter all such orders may be made as may be necessary for that purpose; provided that the Court before which any such suit or matter is pending may, on reasonable cause being shown, direct that such suit or matter shall be continued as if this Code had not been passed up to the execution or to decree or to any stage of the suit or matter which the Court may direct, after which stage the provisions of this Code shall be applicable.

Pending matters.

2. In this Code, unless there be something repugnant in the subject or context—

Interpretation.

"Chief Secretary" means the Chief Secretary to Government, Federated Malay States;



"Civil prison" means any prison or part of a prison in which persons arrested under civil process are confined ;

"Conveyance" includes transfer or assignment ;

"Decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal ;

"Decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made, and includes any person to whom such decree or order is transferred ;

"Foreign Court" means a Court situate beyond the limits of the Federated Malay States ;

"Foreign judgment" means the judgment of a foreign Court ;

"Judge" means the presiding officer of a Court ;

"Judgment" means the statement given by the Judge of the grounds of a decree or order ;

"Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made ;

"Legal Adviser" means the Legal Adviser to the Government of the Federated Malay States ;

"Lower Civil Courts" means Courts of Magistrates of the First Class and Courts of Magistrates of the Second Class ;

"Mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession ;

"Order" means the formal expression of any decision of a Civil Court which is not a decree ;

"Public officer" bears the same meaning as "public servant" in the Penal Code ;

"Public Prosecutor" includes Deputy Public Prosecutor ;

"Registrar" includes Assistant Registrar ;

"Solicitor" means an advocate and solicitor of the Supreme Court of the Federated Malay States.

Provisions not  
applicable to  
Supreme Court.

3. The following portions of this Code shall not apply to the Supreme Court in the exercise of its original civil jurisdiction—namely, sections 48, 111, 156, 183, 184, 185, 186, 187, 188, 189, 190 (so far as it relates to the manner of taking evidence), 198, 199, 200, 202 and so much of section 452 as relates to the making of a memorandum.

Provisions  
applicable to  
Lower Courts.

4. The Chapters and sections specified in the second schedule shall apply (so far as they are applicable) to the Civil Courts below the Court of a Judicial Commissioner.

The other Chapters and sections shall not apply to such Courts.



## PART I.

## SUITS IN GENERAL.

## CHAPTER I.

## RES JUDICATA.

5. Except where a suit has been stayed under section 14, no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in the Federated Malay States, having jurisdiction to grant such relief. Pending suits.

*Explanation.*—The pendency of a suit in a Foreign Court does not preclude the Courts in the Federated Malay States from trying a suit founded on the same cause of action.

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

*Explanation I.*—The expression “former suit” denotes a suit which has been decided prior to the suit in question, whether or not it was instituted prior thereto.

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

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

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

*Explanation V.*—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

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

*Explanation VII.*—Where a foreign judgment is relied on, the production of any document purporting to be a certified copy of a foreign judgment is presumptive evidence that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appear on the record; but such presumption may be displaced by proving want of jurisdiction.



When foreign judgment not conclusive.

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

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

## CHAPTER II.

### THE PLACE OF SUING.

Court in which suit to be instituted.

8. Every suit shall be instituted in the Court of the lowest grade competent to try it.

" Courts Enactment, 19 ."

9. The provisions of this Chapter are subject to the limitations prescribed by "The Courts Enactment, 19 ." as to the jurisdiction of the Courts for the administration of civil justice in the Federated Malay States.

Local limits of Lower Civil Courts.

10. The Resident of a State may, from time to time, by notification in the *Gazette*, define the local limits of the Lower Civil Courts in such State. Unless and until the Resident of a State exercises this power, the local limits of the Lower Civil Courts in such State shall be those existing at the time when this Code comes into force.

Where suits in Supreme Court may be instituted.

11. Suits in the Supreme Court may be instituted in any district in which that Court has an office for the issue of process.

Where suits in Lower Courts may be instituted.

12. (i) All suits in the Lower Civil Courts shall be instituted in a Court within the local limits of whose jurisdiction

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

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



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

*Illustrations.*

(a) A is a tradesman in Telok Anson. B carries on business in Ipoh. B, by his agent in Telok Anson, buys goods of A and requests A to deliver them to the Federated Malay States Railways. A delivers the goods accordingly in Telok Anson. A may sue B for the price of the goods either in Telok Anson, where the cause of action has arisen, or in Ipoh, where B carries on business.

(b) A resides at Kuala Kubu, B at Kuala Lumpur and C at Klang. A, B and C being together at Kajang, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Kajang, where the cause of action arose. He may also sue them at Kuala Lumpur, where B resides, or at Klang, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

(ii) A Judicial Commissioner may, on the application of any party, or of his own motion, order that any suit pending in a Lower Civil Court be transferred for trial to the Supreme Court or to any other Lower Civil Court competent to try the same in respect of its nature or the amount or value of its subject-matter.

**13.** Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Suits for compensation for wrongs to person or movables.

*Illustrations.*

(a) A, residing in Seremban, beats B in Port Dickson. B may sue A either in Port Dickson or in Seremban.

(b) A, residing in Kuala Lipis, publishes in Pekan statements defamatory of B. B may sue A either in Pekan or in Kuala Lipis.

**14.** (i) Where a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly.

Power to stay proceedings where all defendants do not reside within jurisdiction.

(ii) If the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

(iii) In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

(iv) Every such application shall be made within fourteen days after service of the summons on the applicant, and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

**15.** Where the Court, under section 14, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaintiff shall not be chargeable with any Court fee.

Remission of Court fee where suit instituted in another Court.

Provided that the proper fee has been paid on the institution of the suit in the former Court, and that the plaint has been returned by such Court.



## CHAPTER III.

## PARTIES TO SUITS.

Who may be joined as plaintiffs.

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

Power to order separate trials.

**17.** Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient.

Who may be joined as defendants.

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

Judgment for or against one or more of joint parties.

**19.** Judgment may be given without any amendment

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to ;

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

Interest of defendant.

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

Joinder of parties liable on same contract.

**21.** The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

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

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

(ii) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-section (i) may apply to the Court to be made a party to such suit.

Suit not to fail by reason of misjoinder or non-joinder.

**23.** No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Court may substitute or add parties.

**24.** (i) Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been so instituted through a *bonâ fide* mistake and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.



(ii) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as the Court thinks just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Court may dismiss or add parties.

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

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

Where defendant added, plaint to be amended.

(v) Subject to the provisions of the law for the time being relating to the limitation of suits, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

**25.** The Court may give the conduct of the suit to such person as it deems proper.

Conduct of suit.

**26.** (i) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding: and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

Appearance of one of several plaintiffs or defendants for others.

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

**27.** All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived.

Time for taking objections as to non-joinder or misjoinder.

#### CHAPTER IV.

##### FRAME OF SUIT.

**28.** Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute and to prevent further litigation concerning them.

Suit, how to be framed.

**29.** (i) Every suit shall include the whole of the claim which the plaintiff desires to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

(ii) If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

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



(iv) For the purposes of this section an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

*Illustration.*

A lets a house to B at a yearly rent of \$1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Only certain claims to be joined with suit for recovery of land.

**30.** No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property or to obtain a declaration of title to immovable property, except

- (a) claims in respect of mesne profits or arrears of rent in respect of the property claimed ;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held ; and
- (c) claims by a mortgagee or chargee to enforce any of his remedies under the mortgage or charge.

Claims by or against executor.

**31.** No claim by or against an executor or administrator, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Plaintiff may join several causes of action.

**32.** (i) Subject to the provisions of Chapter II and of section 30, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly ; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

(ii) Where it appears to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit if the parties agree, order separate trials of any such causes of action to be had or make such other order as may be necessary or expedient for the separate disposal thereof.

(iii) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under sub-section (ii).

Defendant may apply to confine suit.

**33.** (i) Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

(ii) Where, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

(iii) Every amendment made under this section shall be attested by the signature of the Judge.



## CHAPTER V.

## RECOGNIZED AGENTS AND SOLICITORS.

**34.** Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party to a suit or appeal in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a solicitor duly appointed to act on his behalf.

Appearance, etc., may be in person, by recognized agent or by solicitor.

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

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

Recognized agents.

- (a) persons holding powers of attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties;
- (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

**36.** (i) Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

Service of process on recognized agent.

(ii) The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

**37.** The appointment of a solicitor to make or do any appearance, application or act as aforesaid shall be in writing and shall be filed in Court. When so filed it shall be considered to be in force until revoked, with the leave of the Court, by a writing signed by the client and filed in Court, or until the client or the solicitor dies or all proceedings in the suit are ended so far as regards the client.

Appointment of solicitor.

**38.** Processes served on the solicitor of any party or left at the office of such solicitor, or at his ordinary residence if he have no office, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the solicitor represents, and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Service of process on solicitor.

**39.** (i) Besides the recognized agents described in section 35 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Agent to accept service.

(ii) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a certified copy thereof, shall be filed in Court.



## CHAPTER VI.

## INSTITUTION OF SUITS.

Suits to be commenced by plaint.

Language and contents of plaint.

**40.** Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

**41.** (i) The plaint shall be distinctly written in English and shall contain the following particulars :

- (a) the name of the Court in which the suit is brought ;
- (b) the name, description and place of residence of the plaintiff ;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained ;
- (d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose ;
- (e) a demand of the relief which the plaintiff claims ; and
- (f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

(ii) Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed.

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

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

*Illustrations.*

(a) A sues as B's executor. The plaint must state that A has proved B's will.

(b) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(iv) The plaint shall show that the defendant is or claims to be interested in the subject-matter and that he is liable to be called upon to answer the plaintiff's demand.

*Illustration.*

A dies, leaving B his executor, C his legatee and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must show that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

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

Plaint to be signed and verified.

**42.** The plaint shall be signed by the plaintiff and his solicitor (if any) and shall be verified at the foot by the plaintiff or by some other person proved, to the satisfaction of the Court, to be acquainted with the facts of the case.

Provided that, where the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.



**43.** The verification shall be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true. Contents of verification.

The verification shall be signed by the person making it.

**44.** (i) The plaintiff may, at the discretion of the Court, Where plaintiff may be rejected, returned for amendment, or amended.

- (a) at, or at any time before, the settlement of issues be rejected if it does not disclose a cause of action;
- (b) at, or at any time before, the settlement of issues be returned for amendment within a time to be fixed by the Court, and upon such terms as to the payment of costs occasioned by such amendment as the Court thinks fit, if it
  - (1) is not signed and verified as hereinbefore required,
  - (2) does not state correctly and without prolixity the several particulars hereinbefore required or contains particulars other than those so required,
  - (3) is wrongly framed by reason of non-joinder or misjoinder of parties, or joins causes of action which ought not to be joined in the same suit, or
  - (4) is not framed in accordance with the provisions of section 28;
- (c) at any time before judgment be amended by the Court upon such terms as to the payment of costs as the Court thinks fit.

Provided that a plaintiff shall not be amended, either by the party to whom it is returned for amendment or by the Court, so as to convert a suit of one character into a suit of another and inconsistent character.

(ii) Where a plaintiff is amended under this section, the amendment shall be attested by the signature of the Judge.

**45.** The plaintiff shall be rejected in the following cases :

- (a) where the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (b) where the relief sought is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply properly stamped paper within a time to be fixed by the Court, fails to do so;
- (c) where the suit appears from the statement in the plaintiff to be barred by any law;
- (d) where the plaintiff, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Where plaintiff shall be rejected.

**46.** Where a plaintiff is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

Procedure on rejecting plaintiff.



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

Where plaint shall be returned to be presented to proper Court.

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

**48.** (i) The plaint shall be returned to be presented to the proper Court

- (a) where a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it and no option as to the selection of the Court is allowed by law;
- (b) where the suit is one which under the provisions of "The Courts Enactment, 19" the Court to which the plaint has been presented has no jurisdiction to try;
- (c) where, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within the local limits of the jurisdiction of the Court to which the plaint is presented.

(ii) On returning a plaint the Judge, or the Registrar by his order, shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on admitting plaint.

**49.** (i) The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such concise statements.

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

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

(iv) The chief ministerial officer of the Court shall sign such memorandum and copies or concise statements if, on examination, he finds them to be correct.

(v) The Court shall cause the particulars mentioned in section 41 to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which plaints are admitted.

Production of document on which plaintiff sues.

**50.** (i) Where a plaintiff sues upon a document in his possession or power, he shall produce it in the Court when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(ii) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be annexed to the plaint.

(iii) This section applies only to documents which are in their nature the essence of the case and on which the plaint is founded.



**51.** In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

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

**52.** In the case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented and had at the same time delivered a copy of the instrument to be filed with the plaint.

Suits on lost negotiable instruments.

**53.** (i) Where the document on which the plaintiff sues is an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Production of shop-book.

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

**54.** (i) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Inadmissibility of document not produced when plaint filed.

(ii) Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

## CHAPTER VII.

### ISSUE AND SERVICE OF SUMMONS.

#### ISSUE OF SUMMONS.

**55.** (i) When the plaint has been registered and the copies or concise statements required by section 49 have been filed, a summons may be issued to each defendant to appear and answer the claim, on a day to be therein specified.

Summons.

(a) in person, or

(b) by a solicitor duly instructed and able to answer all material questions relating to the suit, or

(c) by a solicitor accompanied by some other person able to answer all such questions.

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(ii) Every such summons shall be signed by the chief ministerial officer of the Court, and shall be sealed with the seal of the Court.



Copy or statement annexed to summons. Court may order defendant or plaintiff to appear in person.

**56.** Every such summons shall be accompanied by one of the copies or concise statements mentioned in section 49.

**57. (i)** Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

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

No party to be ordered to appear unless resident within local limits of Court. Summons to be either to settle issues or for final disposal.

**58.** No party shall be ordered to appear in person unless he resides within the local limits of the jurisdiction of the Court.

**59.** The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly.

Provided that, in every suit heard by any Court other than the Supreme Court, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant.

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

What is "sufficient time" shall be determined with reference to the circumstances of the case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

**61.** The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

**62.** When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

#### SUMMONS FOR SERVICE OUT OF THE FEDERATED MALAY STATES.

Leave of Supreme Court.

**63.** No summons for service on a defendant out of the Federated Malay States shall be issued by any Court without the leave of the Supreme Court or a Judge thereof.

Procedure to obtain leave to issue.

**64.** Any party desiring that a summons be issued for service on a defendant out of the Federated Malay States shall deliver to the Registrar of the Supreme Court the summons and copy which he desires to issue, and the title of the intended suit shall be entered in the register of civil suits of the Court in which the said suit is to be instituted, and the next serial number shall provisionally be assigned to such summons. The application for leave to issue shall be by summons in Chambers, and, on production of the summons bearing a note or memorandum, signed by a Judicial Commissioner or by the Registrar, giving leave for the issue of a summons the summons, completed in accordance with the terms of such order, shall be sealed and issued.



**65.** (i) Service out of the Federated Malay States may be allowed by the Supreme Court or a Judge thereof whenever

When service out of the Federated Malay States may be allowed.

- (a) the whole subject-matter of the suit is immovable property situate within the Federated Malay States (with or without rents or profits); or
- (b) any act, instrument, will, contract, obligation or liability affecting immovable property situate within the Federated Malay States is sought to be construed, rectified, set aside or enforced in the suit; or
- (c) any relief is sought against any person domiciled or ordinarily resident within the Federated Malay States; or
- (d) the action is for the administration of the estate of any deceased person, who, at the time of his death, was domiciled, or ordinarily resided, or carried on business, within the Federated Malay States, or for the execution (as to property situate within the Federated Malay States) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of the Federated Malay States; or
- (e) the action is founded on the breach or alleged breach, within the Federated Malay States, of any contract, wherever made, which according to the terms thereof ought to be performed within the Federated Malay States; or
- (f) any injunction is sought as to anything to be done within the Federated Malay States, or any nuisance within the Federated Malay States is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (g) any person out of the Federated Malay States is a necessary or proper party to a suit properly brought against some other person duly served within the Federated Malay States.

(ii) Any order giving leave to effect such service shall, unless the mode of service be prescribed by this Code, direct in what mode service is to be effected, and the reasonable expenses of such service shall be allowed.

**66.** Every application for leave to issue a summons for service on a defendant out of the Federated Malay States shall be supported by an affidavit or other evidence, stating that, in the belief of the deponent, the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, the ordinary means of communication with such place or country, and the grounds on which the application is made; and no such leave shall be granted unless it is made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the Federated Malay States under this section.

Affidavit in support of application for service out of the Federated Malay States.



## SERVICE OF SUMMONS.

Delivery of  
summons for  
service.

**67.** If the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept service of the summons, the summons shall ordinarily be delivered or sent to the proper officer to be served by him or one of his subordinates.

Mode of service.

**68.** Service of the summons shall be made by delivering or tendering a copy thereof signed by the chief ministerial officer of the Court and sealed with the seal of the Court.

Service on  
several  
defendants.

**69.** Except as otherwise provided by this Code, where there are more defendants than one, service of the summons shall be made on each defendant.

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

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

Service on agent  
by whom  
defendant  
carries on  
business.

**71.** (i) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(ii) For the purpose of this section the master of a ship is the agent of his owner or charterer.

Service on agent  
in charge, in  
suits for  
immovable  
property.

**72.** Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, the service cannot be made on the defendant in person, and the defendant has no agent empowered to accept service, it may be made on any agent of the defendant in charge of the property.

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

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

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

Person served  
to sign acknow-  
ledgment.

**74.** Where the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

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

**75.** Where

(a) the defendant or other person refuses or is unable to sign the acknowledgment, or

(b) the serving-officer cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom the service can be made,

the serving-officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.



**76.** The serving-officer shall, in all cases in which the summons has been served under section 74, endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served. Endorsement of time and manner of service.

**77.** Where a summons is returned under section 75, the Court shall, if the return under that section has not been verified by the affidavit of the serving-officer, and may if it has been so verified, examine the serving-officer on affirmation, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit. Examination of serving-officer.

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

(ii) The Court may also, in any case falling within the terms of sub-section (i), make an order for the substitution for service of notice by advertisement in the *Gazette* and in such local newspaper or newspapers as the Court may think fit.

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

(iv) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

**79.** (i) If the defendant resides within the jurisdiction of any Court in the Federated Malay States other than the Court in which the suit is instituted and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court having jurisdiction at the place where the defendant resides by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require. Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

(ii) The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) of its proceedings with regard thereto.

**80.** (i) Where the defendant is confined in a prison, the summons shall be delivered to the officer in charge of the prison, and such officer shall cause the summons to be served upon the defendant. Service on defendant in prison.

(ii) The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the prison and by the defendant.



(iii) If the prison in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such prison, and such officer shall cause the summons to be served upon the defendant and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon and signed as provided in sub-section (ii).

Service in the Colony.

**81.** Where the defendant resides in the Colony, the summons may be sent by registered post to the Registrar or to an Assistant Registrar of the Supreme Court of the Colony, and if the summons be returned with an endorsement of service thereon and with an affidavit of such service purporting to have been made before and authenticated by the official seal of such Registrar or Assistant Registrar, the summons shall be deemed to have been duly served.

Service where defendant resides out of the Federated Malay States and Colony and has no agent to accept service.

**82.** Where the defendant does not reside in the Federated Malay States or in the Colony and has no agent in the Federated Malay States empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and forwarded to him by registered post, if the defendant's address be known and if there be postal communication between such place and the place where the Court is situate.

Substitution of letter for summons.

**83.** (i) The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge where the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

(ii) The letter shall contain all the particulars required to be stated in the summons and, subject to the provisions of sub-section (iii), shall be treated in all respects as a summons.

(iii) A letter so substituted for a summons may be sent to the defendant by registered post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service of summons, the letter may be delivered or sent to such agent

#### SERVICE OF PROCESS GENERALLY.

Process to be served at expense of party issuing.

**84.** (i) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

(ii) The Court fee payable for such service shall be paid within a time to be fixed by the Court before the process is issued.

Notices and orders in writing, how served.

**85.** Subject to the provisions of sections 34 to 39, all notices and orders required by this Code to be given to or served on any person shall be in writing and shall be served in the manner hereinbefore provided for the service of summons.

#### POSTAGE.

Postage.

**86.** (i) Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded; provided that a Judicial Commissioner may remit such postage or fee or both.

(ii) The Judicial Commissioners may, with the approval of the Chief Secretary, prescribe a scale of Court fees to be paid in lieu of such postage and registration fees.



## CHAPTER VIII.

## WRITTEN STATEMENT AND SET-OFF.

**87.** The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record. Written statements.

**88.** (i) Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off. Particulars of set-off to be given in written statement.

(ii) The written statement shall have the same effect as a plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any solicitor in respect of the costs payable to him under the decree.

*Illustrations.*

(a) A bequeaths \$2,000 to B, and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays \$1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of \$1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the \$1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation, which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for \$500. B holds a judgment against A for \$1,000. The two claims, being both definite pecuniary demands, may be set-off.

(e) A sues B for compensation on account of a trespass. B holds a promissory note for \$1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for \$1,000. C cannot set-off a debt due to him by A alone.

(g) A sues B and C for \$1,000. B cannot set-off a debt due to him alone by A.

(h) A owes the partnership firm of B and C \$1,000. B dies leaving C surviving. A sues C for a debt of \$1,500 due in his separate character. C may set-off the debt of \$1,000.

**89.** Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit.

No written statement to be received after first hearing.

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.



Procedure when  
party fails to  
present written  
statement  
called for by  
Court.

**90.** Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him or make such order in relation to the suit as it thinks fit.

Frame  
of written  
statement.

**91.** (i) Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

(ii) Every such statement shall be divided into paragraphs, numbered consecutively, each paragraph containing as nearly as may be a separate allegation.

Written  
statements to be  
signed and  
verified.

**92.** Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying complaints, and no written statement shall be received unless it is so signed and verified.

Power of  
Court as to  
argumentative,  
prolix, or  
irrelevant  
written  
statement.

**93.** (i) Where it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

(ii) Where any amendment is made under this section, the Judge shall attest it by his signature.

(iii) Where a written statement has been rejected under this section, the party making it shall not present another written statement unless it be expressly called for or allowed by the Court.

#### CHAPTER IX.

##### APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

Parties to  
appear on day  
fixed in  
summons for  
defendant to  
appear and  
answer.

**94.** On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective solicitors, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Dismissal  
of suit where  
summons not  
served in  
consequence of  
plaintiff's  
failure to pay  
fee for issuing.

**95.** Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the Court fee payable for such service, the Court may make an order that the suit be dismissed.

Provided that no such order shall be made, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

Where neither  
party appears,  
suit to be  
dismissed.

**96.** Where on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears when the suit is called on for hearing, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.



**97.** Where a suit is dismissed under section 95 or section 96, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was sufficient cause for his not paying the Court fee required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

In such case plaintiff may bring fresh suit, or Court may restore suit to its file.

**98.** (i) Where after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

(ii) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

**99.** (i) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then

Procedure where only plaintiff appears.

- (a) if it is proved that the summons was duly served, the Court may proceed *ex parte*;
- (b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;
- (c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(ii) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

**100.** Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

**101.** Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Procedure where defendant only appears.



Decree against plaintiff by default bars fresh suit.

**102.** (i) Where a suit is wholly or partly dismissed under section 101, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(ii) No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

Procedure where defendant residing out of the Federated Malay States does not appear.

**103.** Where on the day fixed for the hearing of a suit against a defendant residing out of the Federated Malay States, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

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

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

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

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

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

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

#### SETTING ASIDE DECREES EX PARTE.

Setting aside decree *ex parte* against defendant.

**107.** In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.

No decree to be set aside without notice to opposite party.

**108.** No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.



## CHAPTER X.

## EXAMINATION OF PARTIES BY THE COURT.

**109.** At the first hearing of the suit the Court shall ascertain from each party or his solicitor whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in plaint and written statement admitted or denied.

**110.** At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his solicitor is accompanied, may be examined orally by the Court: and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Oral examination of party or companion of party.

**111.** The substance of the examination shall be reduced to writing by the Judge and shall form part of the record.

Substance of examination to be written.

**112.** (i) Where the solicitor of any party who appears by a solicitor or any such person accompanying a solicitor as is referred to in section 110 refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

Consequence of refusal or inability of solicitor to answer.

(ii) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him or make such order in relation to the suit as it thinks fit.

## CHAPTER XI.

## DISCOVERY AND INSPECTION.

**113.** (i) Any party may at any time by leave of the Court deliver through the Court interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer.

Power to deliver interrogatories.

(ii) No party shall deliver more than one set of interrogatories to the same party without an order for that purpose, and no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

(iii) The Court shall not grant leave under sub-section (i) unless and until the party applying for such leave has deposited in Court the sum of fifty dollars as security for costs.

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



Service of  
interrogatories.

**114.** Interrogatories delivered under section 113 shall be served on the solicitor (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 74, 75, 76 and 77 shall, in the latter case, apply so far as may be practicable.

Costs of  
interrogatories.

**115.** The Court, in adjusting the costs of the suit, shall, at the instance of any party, enquire or cause enquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Service of  
interrogatories  
on officer of  
corporation or  
body.

**116.** Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Objections to  
interrogatories  
by answer.

**117.** Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not delivered *bonâ fide* for the purpose of the suit, or that the matters enquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Setting aside  
and striking  
out interro-  
gatories.

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

Time for filing  
affidavit in  
answer.

**119.** Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof or within such further time as the Court may allow.

No exceptions  
to be taken.

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

Procedure  
where party  
omits to answer  
sufficiently.

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

Order for  
declaration of  
all documents  
relating to suit.

**122.** (i) Any party to a suit may, at any time before the first hearing, apply to the Court for an order directing any other party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit.

(ii) On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such declaration is not necessary, or not necessary at that stage of the suit, or make such order either generally or limited to certain classes of documents as the Court may in its discretion think fit; provided that such declaration shall not be ordered when and so far as the Court shall be of opinion that it is not



necessary either for disposing fairly of the suit or for saving costs, and shall not in any case be ordered unless and until the party applying for such order has deposited in Court the sum of fifty dollars as security for costs.

(iii) The affidavit to be made by a party against whom an order has been made under this section shall specify which, if any, of the documents therein mentioned the declarant objects to produce together with the grounds of such objection.

**123.** The Court may, at any time during the pendency of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

Power to order production of documents during suit.

**124.** (i) Any party to a suit may at any time before or at the hearing thereof give notice in writing to any other party to produce any specified document for the inspection of the party giving such notice or of his solicitor and to permit such party or solicitor to take copies thereof.

Notice to produce for in pection documents referred to in plaint, etc.

(ii) No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

(iii) Notice to produce documents shall be in the form contained in the third schedule, No. 122, with such variations as circumstances may require.

**125.** The party to whom such notice is given shall, within ten days from the receipt thereof, deliver to the party giving the same a notice in writing stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his solicitor's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Party receiving such notice to deliver notice when and where inspection may be had.

**126.** (i) Where any party served with notice under section 124 omits to give notice under section 125 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit; provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Order for inspection.

(ii) Any application for an order for inspection of documents, other than documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing

- (a) of what documents inspection is sought,
- (b) that the party applying is entitled to inspect them, and
- (c) that they are in the possession or power of the party against whom the application is made.



Power to order  
issue or  
question on  
which right to  
discovery  
depends  
to be first  
determined.

**127.** Where the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that the issue or question be determined first and reserve the question as to the discovery or inspection.

Consequence of  
failure to  
answer or give  
inspection.

**128.** (i) Where any party fails to comply with any order to answer interrogatories or for discovery, production or inspection which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

(i) Any party failing to comply with any order under this Chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Penal Code.

## CHAPTER XII.

### ADMISSIONS.

Power to  
demand  
admission of  
genuineness of  
documents.

**129.** (i) Any party to a suit may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require any other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

(ii) Such admission shall be in writing signed by the other party or his solicitor and shall be filed in Court.

(iii) Where such notice is not given, no costs of proving such document shall be allowed, unless the Court otherwise directs.

(iv) Where such notice is not complied with within four days after its being served, and the Court thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever the result of the suit may be.

Power to  
demand  
admission of  
facts.

**130.** (i) Any party may, by notice in writing, at any time not less than ten days before the day fixed for the hearing, require any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice.

(ii) Such notice shall be in numbered paragraphs signed by the party or his solicitor, with a margin on the right hand side of the paper on which it is written as nearly as may be one-third the width of the entire paper.

(iii) The admission shall, so far as possible, be written on the right hand margin of the notice. Whatever cannot be written on the said margin shall be continued on other paper attached to the notice. The admission shall be signed by the other party or his solicitor and filed in Court by such party or his solicitor.



(iv) In case of neglect to give such notice or of neglect or refusal to admit the fact or facts mentioned in such notice within six days after service of such notice, or within such further time as the Court may allow, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs.

(v) Such admission shall be for the purposes of the particular suit and shall not be used against the party on any other occasion or in favour of any person other than the party giving the notice; and the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

**131.** An affidavit of the solicitor or his clerk of the due signature of any admissions consequent upon notice to admit documents or facts, of the service of any notice or of the time when it was served, with a copy of the notice, shall in all cases be sufficient evidence thereof.

Affidavit of signature of admissions.

**132.** Any party may at any stage of a suit where admissions of fact have been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties. The Court may upon such application make such order or give such judgment as the Court may think just.

Application for judgment upon admissions of fact.

### CHAPTER XIII.

#### PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

**133.** (i) The parties or their solicitors shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Documentary evidence to be in readiness at first hearing.

(ii) The Court shall receive the documents so produced; provided that they are accompanied by an accurate list thereof prepared in such form as the Judicial Commissioners may from time to time prescribe.

**134.** No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 133 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof. And the Court receiving any such evidence shall record its reasons for so doing.

Effect of non-production of documents.

**135.** The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rejection of documents.

**136.** (i). Subject to the provisions of subsection (ii), there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars—namely,

Endorsements on documents admitted in evidence.

- (a) the number and title of the suit;
- (b) the date on which the document was produced; and
- (c) a letter or number by which it may be identified.

(ii) Where a document so admitted is an entry in a book, account or record and a copy thereof has been substituted for the original under the next following section, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.



Marking  
entries in books,  
accounts and  
records.

**137.** (i) Where a document admitted in evidence in the suit is an entry in a letter-book or shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(ii) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished

(a) where the record, book or account is produced on behalf of a party, then by that party ; or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(iii) Where a copy of an entry is furnished under the foregoing provisions of this section, the Court shall, after causing the copy to be examined, compared and attested in manner mentioned in section 53, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements  
on documents  
rejected as  
inadmissible  
in evidence.

**138.** Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of section 136, sub-section (i), and a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Recording of  
admitted and  
return of  
rejected  
documents.

**139.** (i) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under section 137, shall form part of the record of the suit.

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

Court may  
order any  
document to be  
impounded.

**140.** Notwithstanding anything contained in section 53, section 137, sub-section (iii), or section 139, sub-section (ii), the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court for such period and subject to such conditions as the Court thinks fit.

Return of  
admitted  
documents.

**141.** (i) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 140, be entitled to receive back the same,

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

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

Provided that a document may be returned at any time before either of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original and undertakes to produce the original if required to do so.



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

(ii) On the return of a document which has been admitted in evidence a receipt shall be given by the person receiving it in a receipt-book to be kept for the purpose.

**142.** (i) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding and inspect the same.

Court may send for papers from its own records or from other Courts.

(ii) Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his solicitor showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(iii) Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

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

Provisions as to documents apply to material objects.

#### CHAPTER XIV.

##### SETTLEMENT OF ISSUES.

**144.** (i) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

(ii) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(iii) Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

(iv) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(v) At the first hearing of the suit the Court may, if it thinks fit, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance and thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

**145.** Where issues both of law and of fact arise in a suit in which issues have been framed and recorded under sub-section (v) of section 144 and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Issues of law and of fact.

**146.** The Court may frame the issues from all or any of the following materials:

Materials from which issues may be framed.

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the solicitors of the parties;



- (b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;
- (c) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues.

**147.** If the Court, in any case where it decides to frame and record issues, is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the provisions of any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Power to amend, add and strike out issues.

**148.** (i) In any case where issues have been framed and recorded under this Chapter, the Court may at any time before passing a decree amend the issues or frame additional issues on such terms as to costs or otherwise as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

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

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

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

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

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

**150.** Where the Court is satisfied, after making such enquiry as it deems proper,

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

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



## CHAPTER XV.

## DISPOSAL OF THE SUIT AT THE FIRST HEARING.

**151.** Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment. Parties not at issue.

**152.** Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants. One of several defendants not at issue with plaintiff.

**153.** (i) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues. Parties at issue.

(ii) Where the finding thereon is sufficient for the decision, the Court may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit. Provided that, where the summons has been issued for the settlement of issues only, the parties or their solicitors are present and none of them object.

(iii) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

**154.** Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, adjourn the suit for the production of such evidence as may be necessary for its decision. Failure to produce evidence.

## CHAPTER XVI.

## SUMMONING AND ATTENDANCE OF WITNESSES.

**155.** At any time after the suit is instituted the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents. Summons to attend to give evidence or produce documents.

**156.** (i) The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance. Expenses of witness to be paid into Court on applying for summons.

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



(iii) Regard shall be had, in fixing the scale of expenses or remuneration to be paid under this section to the rules (if any) made in that behalf by the Judicial Commissioners with the approval of the Chief Secretary.

Tender of  
expenses to  
witness.

**157.** The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure  
where  
insufficient  
sum paid in.

**158.** (i) Where no sum has been paid into Court or where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration as aforesaid, the Court may direct such sum or further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

(ii) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

Time, place and  
purpose of  
attendance to  
be specified in  
summons.

**159.** Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Summons  
to produce  
document.

**160.** Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced instead of attending personally to produce the same.

Power to  
require persons  
present in Court  
to give evidence.

**161.** Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Summons, how  
served.

**162.** Every summons to a person to give evidence or to produce a document shall be served as nearly as may be in the manner hereinbefore prescribed for the service of summons on a defendant; and the rules contained in Chapter VII as to proof of service shall apply in the case of all summonses served under this section.

Time for serving  
summons.

**163.** The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.



**164.** (i) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

Procedure where witness fails to comply with summons.

(ii) Where the Court sees reason to believe that such evidence or production is material and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence, or to produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(iii) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may in its discretion issue a warrant, either with or without bail, for the arrest of such person and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and the fine which may be imposed under section 166.

Provided that no Court other than the Supreme Court shall make an order for the attachment of immovable property.

**165.** Where, at any time after the attachment of his property, such person appears and satisfies the Court

If witness appears, attachment may be withdrawn.

- (a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and
- (b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding section, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment and shall make such order as to the costs of the attachment as it thinks fit.

**166.** The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding two hundred and fifty dollars as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold, or if already attached under section 164 to be sold, for the purpose of satisfying all costs of such attachment together with the amount of the said fine, if any.

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall direct that the property be released from attachment.

**167.** The provisions with regard to the attachment and sale of property in execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Chapter as if the person whose property is so attached were a judgment-debtor.

Mode of attachment.



Court may of  
its own accord  
summon as  
witnesses  
strangers to  
suit.

**168.** Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, other than a party to the suit, who is not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons  
summoned to  
give evidence  
or produce  
document.

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

When they  
may depart.

**170.** (i) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

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

Application of  
sections 164 to  
167.

**171.** The provisions of sections 164 to 167 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs without lawful excuse in contravention of section 170.

Procedure  
where  
witness arrested  
cannot give  
evidence or  
produce  
document.

**172.** Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and in default of his giving such bail or security may order him to be detained in the civil prison.

Persons  
residing at a  
distance.

**173.** No one shall be bound to attend in person to give evidence in Court unless he resides

(a) within 20 miles of the Court-house, or

(b) more than 20 miles but less than 50 miles from the Court-house, provided that there is railway communication for five-sixths of the distance between the place where he resides and the place where the Court is situate.

Consequence of  
refusal of party  
to give evidence  
when called on  
by Court.

**174.** Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may in its discretion either give judgment against him or make such order in relation to the suit as it thinks fit.

Provisions as to  
witnesses to  
apply to parties  
summoned.

**175.** Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.



## CHAPTER XVII.

## ADJOURNMENTS.

**176.** (i) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Court may grant time, and adjourn hearing.

(ii) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

**177.** Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter IX or make such other order as it thinks fit.

Procedure if parties fail to appear on day fixed.

**178.** Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

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

## CHAPTER XVIII.

## HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

**179.** The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Right to begin.

**180.** (i) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence.

Statement and production of evidence.

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

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

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

Evidence where several issues.

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

Witnesses to be examined in open Court.



How evidence shall be taken in appealable cases.

**183.** In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing in English by the Judge, not ordinarily in the form of question and answer but in that of a narrative.

Any particular question and answer may be taken down.

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

Questions objected to and allowed by Court.

**185.** Where any question put to a witness is objected to by a party or his solicitor and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Remarks on demeanour of witnesses.

**186.** The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases.

**187.** In cases in which an appeal is not allowed it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes.

Procedure where Judge unable to take down evidence or make memorandum thereof.

**188.** Where the Judge is unable to take down the evidence as required by section 183 or to make a memorandum of it as required by section 187, he shall cause the evidence to be taken down, or the memorandum to be made, as the case may be, from his dictation in open Court.

Power to deal with evidence taken down by another Judge.

**189.** Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing sections as if such evidence or memorandum had been taken down or made by him under the said sections and may proceed with the suit from the stage at which his predecessor left it.

Power to examine witness immediately.

**190.** (i) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(ii) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(iii) The evidence so taken shall be read over to the witness and, if he admits it to be correct, shall be signed by him and may then be read at any hearing of the suit.

Court may recall and examine witness.

**191.** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Power of Court to inspect.

**192.** The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.



## CHAPTER XIX.

## AFFIDAVITS.

**193.** Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable.

Power to order any point to be proved by affidavit.

Provided that, where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

**194.** Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

Power to order attendance of deponent for cross-examination.

Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.

**195.** (i) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated.

Matters to which affidavits shall be confined.

(ii) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

**196.** (i) Any affidavit may be used under this Code if it is sworn or affirmed

Oath or affirmation of deponent, by whom to be administered.

(a) in the Federated Malay States, before a Magistrate or before a Registrar of the Supreme Court;

(b) in England, Scotland, Ireland or the Channel Islands or in any Colony, island or place under the dominion or jurisdiction of His Britannic Majesty or in any of the States in the Malay Peninsula (other than the Federated Malay States) or in Borneo under the protection of His said Majesty, before any Judge, Court, notary-public or person lawfully authorized to administer oaths or affirmations;

(c) in any other place, before any of His Britannic Majesty's Consuls or Vice-Consuls.

(ii) The Judges and other officers of a Court shall take judicial notice of the seal or signature, as the case may be, of any such Judge, Court, notary-public, person, Consul or Vice-Consul attached, appended or subscribed to any such affidavit.

## CHAPTER XX.

## JUDGMENT AND DECREE.

**197.** The Court, after the case has been heard, shall pronounce judgment in open Court either at once or on some future day, of which due notice shall be given to the parties or their solicitors.

Judgment when pronounced. Power to pronounce judgment written by Judge's predecessor.

**198.** A Judge may pronounce a judgment written and signed by his predecessor but not pronounced.



Language of judgment.

**199.** The judgment shall be written in English.

Judgment to be dated and signed.

**200.** The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of inferior Courts.

**201.** The judgments of Courts inferior to the Supreme Court need not contain more than the points for determination and the decision thereupon; provided that on the application of any party who is dissatisfied with any judgment of a Lower Civil Court within the time limited by Chapter XLV for appealing the Magistrate shall certify in writing the grounds of his judgment and deliver such certificate to the applicant.

Court to state its decision on each issue.

**202.** In suits in which issues have been framed the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Contents of decree.

**203.** (i) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(ii) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(iii) If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error is found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error.

Provided that reasonable notice has been given to the parties or their solicitors of the proposed amendment.

Date of decree.

**204.** The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, the Registrar shall sign the decree.

Decree for recovery of immovable property.

**205.** Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of movable property.

**206.** Where the suit is for movable property and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Interest.

**207.** (i) Where and in so far as a decree is for the payment of money, the Court may in the decree order interest at such rate, not exceeding eighteen per cent. per annum, as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest, which shall in no case exceed eighteen per cent. per annum, adjudged on such principal sum for any period prior to the institution of the suit, with



further interest at such rate as the Court deems reasonable, not exceeding eight per cent. per annum, on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the Court thinks fit.

(ii) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

**208.** (i) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract (if any) under which the money is payable,

Decree may direct payment by instalments.

(ii) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

**209.** Where a suit is for the recovery of possession of immovable property yielding rent or other profits, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

In suits for land Court may decree payment of mesne profits with interest.

**210.** Where a suit is for the recovery of possession of immovable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself or may pass a decree for the property and direct an enquiry into the amount of mesne profits and dispose of the same on further orders.

Court may determine amount of mesne profits prior to suit, or may reserve enquiry.

**211.** (i) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and enquiries to be taken and made, and give such other directions, as it thinks fit.

Administration suit.

(ii) In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to preferential claims and as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable as may be in force for the time being with respect to the estates of judgment-debtors declared insolvent or adjudicated bankrupt; and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration and make such claims against the same as they may, respectively, be entitled to by virtue of this Code.



Suit for dissolution of partnership.

**212.** Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the Court, before making its decree, may pass an order declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for account between principal and agent.

**213.** In a suit for an account of pecuniary transactions between a principal and agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Decree where set-off is allowed.

**214.** (i) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(ii) The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

(iii) The provisions of this section shall apply whether the set-off is admissible under section 88 or otherwise.

Certified copies of decree to be furnished.

**215.** Certified copies of the decree shall be furnished to the parties on application to the Court and at their expense.

#### CHAPTER XXI.

##### COSTS.

Costs of applications.

**216.** When disposing of any application under this Code, the Court may give to either party the costs of such application or may reserve the consideration of such costs for any future stage of the proceedings.

Judgment to direct by whom costs to be paid.

**217.** The judgment shall direct by whom or out of what property the costs of each party are to be paid, and whether in whole or in what part or proportion.

Power of Court as to costs.

**218.** (i) The Court shall have full power to give and apportion costs of every application and suit in such manner as it thinks fit, and the fact that the Court has no jurisdiction to hear the application or try the suit is no bar to the exercise of such power.

(ii) Where the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

(iii) Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for the payment of money.

Costs may be set-off against sum admitted or found to be due.

**219.** The Court may direct that the costs payable to one party by another shall be set-off against any sum which is admitted or is found in the suit to be due from the former to the latter.

Interest on costs. Payment of costs out of subject-matter.

**220.** The Court may give interest on costs at any rate not exceeding eight per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.



## CHAPTER XXII.

## EXECUTION OF DECREES.

## PAYMENT UNDER DECREE.

**221.** All money payable under a decree shall be paid as follows—  
namely,

Modes of paying money under decree.

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which passed the decree directs.

**222.** (i) Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree and such Court deems the consideration to be under the circumstances reasonable.

Agreement to give time to judgment-debtor.

(ii) Every agreement for the satisfaction of a judgment-debt which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree shall be void unless it is made with the like sanction.

(iii) Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

**223.** (i) Where any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or where any payment is made in pursuance of an agreement of the nature mentioned in section 222, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree and the Court shall record the same accordingly.

Payment to decree-holder.

(ii) The judgment-debtor also may inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded, the Court shall record the same accordingly.

(iii) A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.

## COURTS BY WHICH DECREES MAY BE EXECUTED.

**224.** A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

Court by which decree may be executed.

**225.** (i) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court in the Federated Malay States

Transfer of decrees within the Federated Malay States for execution.

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court; or



- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court; or
- (c) if application is made for execution of the decree by sale of immovable property and the Court which passed the decree is not empowered to order sale of immovable property in execution of a decree; or
- (d) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it; or
- (e) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(ii) The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

(iii) The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution or, where the former Court fails to execute the same, the circumstances attending such failure.

Documents to be sent when decree transferred within the Federated Malay States for execution.

**226.** The Court sending a decree for execution under the last preceding section shall send

- (a) a certified copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and
- (c) a certified copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, etc., to file same without proof.

**227.** The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

**228.** Where such copies are so filed, the decree or order may be executed by the Court to which it is sent.

Powers of Court in executing transferred decree.

**229.** The Court executing a decree sent to it under section 225 shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Transfer of decrees to and from Courts outside the Federated Malay States for execution.

**230.** When the High Commissioner has, by notification in the *Gazette*, declared that reciprocal arrangements have been entered into with regard to any Court in British India or in the Colony of the Straits Settlements or in any other British Colony or in any Protected Malay State not being one of the Federated Malay States for the



transfer of decrees to or from such Court for execution, the Court which passed a decree may, subject to the terms of the said notification, on the application of the decree-holder send it to such Court for execution; and every Court shall, subject as aforesaid, execute any decree which may be sent to it by such Court for that purpose.

**231.** The Court sending a decree for execution under the last preceding section shall send

- (a) a certified copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution, or, where the decree has been executed in part, the extent to which satisfaction has been obtained, and what part of the decree remains unexecuted;
- (c) a certified copy of any order for the execution of the decree, and, if no such order has been made, a certificate under the seal of the Court to that effect; and
- (d) security for the costs of execution;

Documents to be sent when decree transferred to Court outside Federated Malay States for execution.

**232.** (i) A Court receiving such copies and certificate from any Court with regard to which reciprocal arrangements have been notified under section 230 shall, if competent to execute decrees of such last mentioned Court, cause such copies and certificate to be filed.

Procedure of Court to which decree is transferred from Court outside Federated Malay States for execution.

(ii) The Court to which in accordance with the terms of a notification under section 230 a decree is sent for execution shall have the same powers in executing such decree as if it had been passed by itself, and all persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree.

(iii) The Court to which in accordance with the terms of a notification under section 230 a decree is sent for execution shall certify to the Court which sent it the fact of such execution or, where the former Court fails to execute the same, the circumstances attending such failure.

#### APPLICATION FOR EXECUTION.

**233.** Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Application for execution.

**234.** (i) Where an application to execute a decree for the payment of money or delivery of other property has been made and granted, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from any of the following dates—namely,

Execution barred in certain cases.

- (a) the date of the decree sought to be executed or of the decree (if any) on appeal affirming the same, or
- (b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date or at recurring periods—the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.



(ii) Nothing in this section shall preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years where the judgment-debtor has, by fraud or force or by absence beyond the jurisdiction of the Court, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Contents of application for execution of decree.

**235.** The application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars—namely,

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and (if any) what payment or other adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and (if any) what previous applications have been made for execution of the decree, the dates of such applications and their results;
- (g) the amount, with the interest (if any), due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of costs (if any) awarded;
- (i) the name of the person against whom the execution of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, or by the attachment of the judgment-debtor's property, or otherwise, as the nature of the relief sought may require.

Application for attachment of movable property not in judgment-debtor's possession.

**236.** Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached containing a reasonably accurate description of the same and stating the name and address of the person or persons in whose possession such property is alleged to be.

Particulars required where application is for attachment of immovable property.

**237.** Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot a description of the property, sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Where application must be accompanied by extract from Registry of Titles or Land Office register.

**238.** Where an application is made for the attachment of any land which is registered in any Registry of Titles or Land Office, the application for attachment shall be accompanied by an authenticated extract from the register of such Registry or Land Office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land, or as liable to pay revenue for such land, and the shares of the persons so registered.



**239.** (i) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representative of the deceased.

Application by joint decree-holder.

(ii) Where the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**240.** Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

Application by transferee of decree.

Provided as follows:

(a) Where the decree, or such interest as aforesaid, has been transferred by assignment, notice in writing of such application shall be given to the transferor and to the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution: provided that the Court may at its discretion dispense with service of such notice on the transferor;

(b) Where a decree for money against two or more persons has been transferred to one of them, it shall not be executed against the other or others.

**241.** Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee to hold subject to equities enforceable against original holder.

**242.** (i) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

If judgment-debtor die before satisfaction, application may be made against his representative.

(ii) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

**243.** (i) The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with the Court may reject the application, or may allow the defect to be remedied then and there or within a time fixed by the Court. If the defect be not so remedied, the application shall be rejected.

Procedure on receiving application for execution of decree.



(ii) Every amendment made under this section shall be signed or initialled by the Judge or the Registrar.

(iii) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Execution in  
case of cross-  
decrees.

**244.** (i) Where applications are made to a Court for the execution of cross-decrees in separate suits between the same parties for the payment of money which are capable of execution at the same time by such Court, then

(a) if the two sums are equal, satisfaction shall be entered upon both decrees ;

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree for the larger sum as well as satisfaction upon the decree for the smaller sum.

(ii) This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(iii) This section does not apply unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits, and the sums due under the decrees are definite.

(iv) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

#### *Illustrations.*

(a) A holds a decree against B for \$1,000. B holds a decree against A for the payment of \$1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for \$1,000 against C, and C obtains a decree for \$1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for \$1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for \$1,000. B cannot treat C's decree as a cross-decree under this section.

(d) A, B, C, D and E are jointly and severally liable for \$1,000 under a decree obtained by F. A obtains a decree for \$100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this section.



**245.** Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then

Execution in case of cross claims under same decree.

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree;
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

**246.** Where an application for execution is made

- (a) more than one year after the date of the decree, or

Notice to show cause why decree should not be executed.

- (b) against the legal representative of a party to the decree,

the Court shall issue a notice to the person against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him; provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of any decree passed on appeal from the decree sought to be executed or of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

*Explanation.*—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

**247.** (i) Where the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

Procedure after issue of notice.

(ii) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

#### WARRANT FOR EXECUTION.

**248.** (i) When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court shall, unless it sees cause to the contrary, issue its warrant for the execution of the decree.

Warrant for execution.

(ii) Such warrant shall be dated the day on which it is issued, and shall be signed by the chief ministerial officer of the Court and sealed with the seal of the Court and delivered to the proper officer to be executed.

(iii) In such warrant a day shall be specified on or before which it shall be executed.

**249.** The proper officer shall endorse on the warrant the day on, and the manner in, which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Endorsement on warrant.



## STAY OF EXECUTION.

When Court  
may stay  
execution.

**250.** (i) The Court to which a decree has been sent for execution under this Chapter shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(ii) Where the property of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property pending the result of the application for such order.

(iii) Before making an order to stay execution or for the restitution of property the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of  
judgment-  
debtor's  
property  
discharged to  
be retaken.

Order of Court  
which passed  
decree or of  
appellate Court  
to be binding  
upon Court  
applied to.

Stay of execu-  
tion pending  
suit between  
decree-holder  
and judgment-  
debtor.

**251.** No order of restitution under section 250 of the property of a judgment-debtor shall prevent it from being retaken in execution of the decree sent for execution.

**252.** Any order of the Court by which the decree was passed, or of such appellate Court as aforesaid, in relation to the execution of such decree shall be binding upon the Court to which the decree was sent for execution.

**253.** Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided.

## QUESTIONS FOR COURT EXECUTING DECREE.

Questions to be  
determined by  
Court executing  
decree.

**254.** (i) The following questions shall be determined by order of the Court executing a decree and not by separate suit—namely,

- (a) questions regarding the amount of any mesne profits as to which the decree has directed enquiry ;
- (b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree ;
- (c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree or to the stay of execution thereof.

(ii) Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.



(iii) Where a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section.

## MODE OF EXECUTION.

**255.** (i) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

Decree against representative of deceased for money to be paid out of deceased's property.

(ii) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor, to the extent of the property in respect of which he has failed so to satisfy the Court, in the same manner as if the decree had been against him personally.

**256.** Where a person has, before the passing of a decree in a suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him, to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant.

Decree where performance guaranteed by surety.

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

**257.** Every decree or order for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be enforced by the attachment and sale of the judgment-debtor's property in manner hereinafter provided.

Decree for payment of money.

**258.** Where a decree is for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for the payment of money.

Decree for mesne profits or other matter, amount of which to be subsequently ascertained.

**259.** Where a decree is for the payment of money and the amount decreed does not exceed the sum of one thousand dollars, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed against the judgment-debtor's movable property within the local limits of the jurisdiction of the Court.

Power to direct immediate execution of decree for money not exceeding one thousand dollars.

**260.** (i) Where a decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the attachment of the property of the judgment-debtor.

Decree for specific movables.

(ii) Where any attachment under this section has remained in force for six weeks, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder in cases where any amount has been fixed under section 206 such amount, and in other cases such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.



(iii) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where at the end of six weeks from the date of the attachment no application to have the property sold has been made, or any such application made has been refused, the attachment shall cease.

Decree for  
specific  
performance ;  
injunction.

**261.** (i) Where the party against whom a decree or injunction for the specific performance of a contract or for the performance of or abstention from any particular act has been made has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree or injunction may be enforced by his detention in the civil prison or by the attachment of his property or by both.

(ii) Where the party against whom such a decree or injunction as aforesaid has been passed is a corporation, the decree or injunction may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof or by both attachment and detention.

(iii) Where any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree or injunction and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance (if any) to the judgment-debtor on his application.

(iv) Where the judgment-debtor has obeyed the decree or injunction and paid all costs of executing the same which he is bound to pay, or where at the end of one year from the date of the attachment no application to have the property sold has been made and granted, the attachment shall cease.

(v) Where such a decree or injunction as aforesaid has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree or injunction.

Decree for  
execution of  
document, or  
endorsement of  
negotiable  
instrument.

**262.** (i) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(ii) The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing requiring his objections (if any) thereto to be made within such time, to be specified in the notice, as the Court fixes in this behalf.

(iii) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft as it thinks fit.



(iv) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon properly stamped paper if a stamp is required by law, and the Court shall execute the document so delivered.

(v) The execution of a document, or the endorsement of a negotiable instrument, by the Court under this section may be in the following form: "C.D., Registrar of the Court of....., for A.B., in a suit by E.F., against A.B.," or in such other form as the Judicial Commissioners may from time to time prescribe, and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

**263.** Where a decree is for the delivery of any immovable property, it may be executed by delivering possession of the property to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

Decree for immovable property.

**264.** Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property and proclaiming to the occupant by beat of gong, or in such other mode as is customary, at some convenient place the substance of the decree in regard to the property.

Delivery of immovable property when in occupancy of tenant.

Provided that if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

#### ATTACHMENT OF PROPERTY.

**265.** (i) The following property is liable to attachment and sale in execution of a decree—namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation, and, except as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf.

Property liable to attachment and sale in execution of decree.

Provided that the following particulars shall not be liable to such attachment or sale—namely,

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain or produce as may in the opinion of the Court be necessary to enable him to earn his livelihood as such;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;



- (d) books of account ;
- (e) mere rights to sue for damages ;
- (f) any right of personal service ;
- (g) pensions, allowances, and gratuities, allowed to military and civil ex-servants of Government, and political pensions ;
- (h) the salary of a public officer or of any servant of a Railway Administration or Sanitary Board to the extent of
  - (1) the whole of the salary, where the salary does not exceed twenty dollars monthly ;
  - (2) twenty dollars monthly, where the salary exceeds twenty dollars and does not exceed forty dollars monthly ; and
  - (3) one moiety of the salary in any other case.

Provided that no salary of a public officer or servant of a Railway Administration or Sanitary Board shall be attached in any State unless and until the written consent of the Resident of such State, or of the Secretary to such Resident, to such attachment shall have been produced in Court.

- (i) the pay and allowances of Malay States Guides and Police ;
- (j) the wages of labourers and domestic servants ;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (l) a right to future maintenance ;
- (m) where the judgment-debtor is a person liable for the payment of land revenue, any movable property which under any law applicable to him is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i) and (j) are exempt from attachment or sale whether before or after they are actually payable.

(ii) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

Examination of judgment-debtor as to his property.

**266.** Where a decree is for the payment of money, the decree-holder may apply to the Court for an order that

- (a) the judgment-debtor, or
- (b) in the case of a corporation, any officer thereof, or
- (c) any other person

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree ; and the Court may make an order for the attendance and examination of such judgment-debtor or officer or other person and for the production of any books or documents.



**267.** Where the property to be attached is movable property in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates and shall be responsible for the due custody thereof.

Attachment of movable property in possession of judgment-debtor.

Provided that where the property seized is subject to speedy and natural decay, or where the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

**268.** The Resident of a State may, with the approval of the Chief Secretary, from time to time by notification in the *Gazette* make rules for the maintenance and custody, while under attachment, of live-stock and other movable property, and the officer attaching property in such State under this section shall, notwithstanding the provisions of the last preceding section, act in accordance with such rules.

Rules for maintenance of property under attachment.

**269.** (i) In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of a corporation, (c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting

Attachment of debt, share and other property not in possession of judgment-debtor.

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(c) in the case of the other movable property, except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(ii) A copy of such order shall be affixed on some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property, except as aforesaid, to the person in possession of the same.

(iii) A debtor prohibited under clause (a) of sub-section (i) may pay the amount of his debt into Court and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

**270.** (i) Where the property to be attached is the salary of a public officer or of the servant of a Railway Administration or Sanitary Board, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

Attachment of salary of public officer.

(ii) A copy of every such order and of the written consent of the Resident, or of the Secretary to the Resident, to the attachment shall be affixed on a conspicuous part of the Court-house and shall be served on the officer so required.

(iii) Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Administration or Sanitary Board, as the case may be, as effectually as payment to the judgment-debtor.



Attachment of negotiable instruments.

**271.** Where the property to be attached is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

Entry into dwelling-house.

**272.** (i) No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(ii) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the person executing any such process has duly gained access to any dwelling-house, he may unfasten, break open, or otherwise open the door of any room in which he has reason to believe any such property to be.

Attachment of property in custody of Court or public officer.

**273.** Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such Court.

Provided, further, that property which in any State, not being in the custody of a Court, is in the custody or under the control of any public officer in his official capacity shall not be attached unless and until the written consent of the Resident of such State, or of the Secretary to such Resident, to such attachment shall have been produced in Court.

Attachment of decree.

**274.** (i) Where the property to be attached is a decree for the payment of money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

(ii) Where the property to be attached is a decree for the payment of money passed by any other Court, the attachment shall be made by a notice in writing to such Court by the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice; or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.



(iii) In the case of all other decrees the attachment shall be made by a notice in writing by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such Court a notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

(iv) The holder of any decree attached under this section shall give to the Court executing the same such information and aid as may reasonably be required.

(v) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this section shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

**275.** (i) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge. Attachment of immovable property.

(ii) The order shall be proclaimed at some place on or adjacent to such property by beat of gong, or in such other mode as is customary, and a copy of the order shall be affixed on a conspicuous part of the property and on a conspicuous part of the Court-house.

(iii) Where the property is land which is subject to "The Registration of Titles Enactment, 1911," the requirements of section 68 of that Enactment shall also be complied with.

(iv) Where the property is land paying revenue to the Government, a copy of the order shall also be affixed on a conspicuous part of the office of the Collector of Land Revenue for the district in which the land is situate.

**276.** Where

- (a) the amount decreed and the costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
- (c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding section.

**277.** Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same. Court may direct coin or currency notes attached to be paid to party entitled.

Withdrawal of attachment on satisfaction or reversal of decree.



Private alienation of property after attachment to be void.

**278.** Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein, and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

#### INVESTIGATION OF CLAIMS AND OBJECTIONS.

Investigation of claims to, and objections to attachment of, attached property.

**279.** (i) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(ii) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be adduced by claimant.

**280.** The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of property from attachment.

**281.** Where upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that being in the possession of the judgment-debtor at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

Disallowance of claim to property attached.

**282.** Where the Court is satisfied that the property was, at the time when it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer.

**283.** Where the Court is satisfied that the property is subject to a mortgage, charge or lien in favour of some person not in possession and thinks fit to continue the attachment, it may do so, subject to such mortgage, charge or lien.

Saving of suits to establish right to attached property.

**284.** The party against whom an order under section 281, 282 or 283 is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Property attached in execution of decrees of several Courts.

**285.** Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.



## SALE GENERALLY.

**286.** Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold and proceeds to be paid to person entitled.

**287.** Sales in execution of decrees shall usually be conducted by a licensed auctioneer or by such other person as the Court may by special order appoint, and, except as provided in section 297, shall be made by public auction in manner hereinafter mentioned.

Sales, by whom conducted and how made.

**288.** (i) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in English, Malay, Chinese and Tamil.

Proclamation of sales by public auction.

(ii) Such proclamation shall state the time and place of sale and shall specify as fairly and accurately as possible

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or a part of an estate paying revenue to the Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(iii) For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary to summon and may examine him in respect of any such matters and require him to produce any document in his possession or power relating thereto.

(iv) The Judicial Commissioners, with the approval of the Chief Secretary, may make rules for the guidance of the Courts in the exercise of their duties under this section. All such rules shall be published in the *Gazette* and shall thereupon have the force of law.

**289.** No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 288, unless the same has been committed or made dishonestly.

Indemnity of Judges, etc.

**290.** (i) The proclamation shall be made and published, as nearly as may be, in the manner prescribed by section 275, and a copy thereof shall then be affixed on a conspicuous part of the Court-house and, in the case of land paying revenue to the Government, also on a conspicuous part of the office of the Collector of Land Revenue for the district in which the land is situate.

Mode of making proclamation.

(ii) Where the Court so directs, such proclamation shall also be published in the *Gazette* and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

**291.** Except in the case of property of the kind mentioned in the proviso to section 267, no sale under this Chapter shall, without the consent in writing of the judgment-debtor, take place until after the

Time of sale.



expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale.

Power to  
adjourn sale.

**292.** (i) The Court may in its discretion adjourn any sale under this Chapter to a specified day and hour, and the person conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment. Provided that where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(ii) Where a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 290 shall be made, unless the judgment-debtor consents to waive it.

(iii) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the person conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

Defaulting  
purchaser  
answerable for  
loss by re-sale.

**293.** Any deficiency of price which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the person holding the sale and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions of this Chapter relating to the execution of a decree for the payment of money.

Decree-holder  
not to bid for or  
buy property  
without  
permission.

**294.** (i) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(ii) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 296 be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(iii) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

Persons  
concerned in  
execution sales  
not to bid for or  
buy property  
sold.

**295.** No person having any duty to perform in connection with any sale under this Chapter shall either directly or indirectly bid for, acquire or attempt to acquire any interest in any property sold at such sale.

Proceeds of  
execution  
sale to be  
distributed  
rateably among  
decree-holders.

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



Provided as follows:

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold;
- (c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied
  - first, in defraying the expenses of the sale;
  - secondly, in discharging the interest and principal money due on the incumbrance;
  - thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and
  - fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor who have, prior to the sale of the said property, applied to the Court which passed the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.
- (ii) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.
- (iii) Nothing in this section affects any right of the Government or the rights of any persons under Part V of "The Labour Code, 1912."

SALE OF MOVABLE PROPERTY.

**297.** Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Negotiable instruments and shares in corporations.

**298.** (i) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

Payment for movable property sold by auction.

(ii) On payment of the purchase-money, the person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

**299.** No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Irregularity not to vitiate sale, but any person injured may sue.



Delivery of  
movable  
property, debts  
and shares.

**300.** (i) Where the property sold is a negotiable instrument or other movable property, of which actual seizure has been made, it shall be delivered to the purchaser.

(ii) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(iii) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Where a  
document or  
endorsement is  
required to  
effect transfer.

**301.** (i) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Court may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(ii) Such execution or endorsement may be in the following form :—  
“A.B., by C.D., Judge of the Court of (*or as the case may be*), in a suit by E.F. against A.B.”

(iii) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party.

Vesting order  
in case of other  
property.

**302.** In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

#### SALE OF IMMOVABLE PROPERTY.

What Court  
may order sales  
of land in  
execution of  
decrees.

**303.** (i) Sales of immovable property in execution of decrees may be ordered by the Supreme Court only.

(ii) Where the judgment-debtor under any decree of a Lower Civil Court is a tenant of immovable property, anything attached to such property which he might before the termination of his tenancy lawfully remove with the permission of his landlord shall, for the purpose of the execution of such decree, be deemed to be movable property and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.



**304.** (i) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by charge or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may on his application postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

Postponement of sale of land to enable judgment-debtor to raise amount of decree.

(ii) In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 278, to make the proposed charge, lease or sale.

Provided that all moneys payable under such charge, lease or sale shall be paid not to the judgment-debtor but, save in so far as a decree-holder is entitled to set-off such money under the provisions of section 294, into Court.

Provided also that no charge, lease or sale under this section shall become absolute until it has been confirmed by the Court.

**305.** On every sale of immovable property under this Chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

Deposit by purchaser and re-sale on default.

**306.** The full amount of purchase-money payable shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

Time for payment in full.

**307.** In default of payment within the period mentioned in the last preceding section the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

**308.** Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale.

**309.** Where the property sold in execution of a decree is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Bid of co-sharer to have preference.

**310.** Where immovable property has been sold in execution of a decree, the decree-holder or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Application to set aside sale of land on ground of irregularity or fraud.

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.



Application to set aside sale on ground of judgment-debtor having no saleable interest. Effect of objection being disallowed and of its being allowed.

**311.** The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold.

**312.** (i) Where no application is made under section 310 or section 311 or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(ii) Where such application is made and allowed, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(iii) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

If sale set aside, price to be returned to purchaser.

**313.** (i) Where a sale of immovable property is set aside under section 312, the purchaser shall be entitled to an order for re-payment of his purchase-money (with or without interest as the Court may direct) against any person to whom it has been paid.

(ii) The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the provisions of this Chapter relating to the execution of a decree for the payment of money.

Certificate to purchaser of immovable property.

**314.** Where a sale of immovable property has become absolute, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before.

Provided that the decree under which the sale took place was still subsisting at that date.

Bar to suit against purchaser buying on behalf of others.

**315.** (i) No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of someone through whom such other person claims.

(ii) Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of property in occupancy of judgment-debtor.

**316.** Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 314, the Court shall, on the application of the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf into possession of the property, and, if necessary, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant.

**317.** Where the immovable property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 314, the Court shall, on the application of the purchaser, order delivery thereof to be made



by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of gong, or in such other mode as is customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

RESISTANCE TO DELIVERY OF POSSESSION TO DECREE-HOLDER OR PURCHASER.

**318.** (i) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

Resistance or obstruction to possession of immovable property.

(ii) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

**319.** Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant and without prejudice to any penalty to which such judgment-debtor or other person may be liable under the Penal Code or any other law for such resistance or obstruction, order that the judgment-debtor or such other person be detained in the civil prison for a term which may extend to thirty days.

Resistance or obstruction by judgment-debtor.

**320.** Where the Court is satisfied that the resistance or obstruction was occasioned by any person, other than the judgment-debtor, claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

Resistance or obstruction by *bond fide* claimant.

**321.** (i) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

Complaint by person dispossessed by decree-holder or purchaser.

(ii) The Court shall fix a day for investigating the matter and shall summon the person against whom the application is made to appear and answer the same.

**322.** Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

*Bond fide* claimant to be restored to possession.

**323.** Nothing in section 320 or section 322 shall apply to resistance or obstruction to the execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Property transferred *pendente lite*.

**324.** Any person not being a judgment-debtor against whom an order is made under section 319, section 320 or section 322 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be conclusive.

Orders conclusive, subject to regular suit.



## EXAMINATION AND IMPRISONMENT OF JUDGMENT-DEBTORS.

Court may  
order arrest of  
judgment-  
debtor for  
examination.

**325.** (i) Where a decree for the payment of money remains wholly or in part unsatisfied (whether execution has issued or not), the Court may order that the judgment-debtor be arrested and brought before the Court at such time as it may order for examination as hereinafter provided, if it appears to the Court that there is reason to believe, having regard to his conduct or the state of his affairs or otherwise,

- (a) that he is likely to leave the Federated Malay States or any of them, with a view of avoiding payment of such money, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing the decree-holder; or
- (b) that he has fraudulently made or suffered any grant of, or removed or concealed, any property; or
- (c) that the debt or liability in question was contracted or incurred by him by, or by reason of, fraud or false pretence; or
- (d) that forbearance in respect thereof was obtained by fraud or false pretence.

(ii) The judgment-debtor may at any time apply to the Court to rescind the said order, and, upon such payment being made or security furnished as the Court shall think reasonable, the judgment-debtor shall be discharged out of custody unless the Court otherwise directs.

Summons  
instead of  
arrest.

**326.** Any decree-holder, instead of applying for an order of arrest under section 325, may without any application to the Court summon the judgment-debtor by a summons in the form contained in the third schedule, No. 152, to be orally examined before the Court respecting his ability to pay or satisfy the claims of the decree-holder. Provided that the issuing of such summons shall not prevent the decree-holder from applying to the Court for an order of arrest under section 325.

Proceedings  
on appearance.

**327.** (i) On the appearance of the judgment-debtor before the Court in obedience to such summons or under such order of arrest as aforesaid, he may be examined on oath by or on behalf of the decree-holder and by the Court respecting his ability to pay the money directed to be paid and for the discovery of property applicable to such payment and as to the disposal which he may have made of any property or otherwise as to any of the matters mentioned in section 328 (i).

(ii) The decree-holder may summon as witnesses any persons whom he may consider likely to be able to afford information respecting the judgment-debtor's ability to pay the money directed to be paid or respecting his property.

(iii) The judgment-debtor shall be bound to produce all books, papers and documents in his possession or power relating to property applicable to such payment.

(iv) Whether the judgment-debtor appears or not, the decree-holder and other witnesses may be examined on oath respecting the matters aforesaid, and the Court, if the judgment-debtor does not appear, may order that he be arrested or may proceed to make an order against him *ex parte*.



(v) The Court may adjourn the examination from time to time and may require from the judgment-debtor such security for his appearance at the adjourned hearing as it may think fit, and in default of his finding security may order that he be detained in custody until the adjourned hearing or if he is in custody may discharge him therefrom.

(vi) The Court may, upon such investigation as aforesaid, make any interim order for the protection of any property applicable or available, or supposed to be applicable or available, in discharge of the decree, as it shall think expedient.

(vii) At the close of the investigation the judgment-debtor, if still in custody, shall be discharged therefrom, unless he be committed to the civil prison as hereinafter provided.

**328.** (i) Upon such investigation the Court may by warrant commit the judgment-debtor to the civil prison for a term not exceeding six months if the Court be the Supreme Court, and six weeks if the Court be an inferior Court, or until payment of the sum due, if it appears to the Court

Commitment to prison.

- (a) that he then has, or since the date of the decree has had, sufficient means to pay the money directed to be paid by him or part thereof and that he refuses or neglects, or has refused or neglected, to pay the same according to the decree; or
- (b) that, with intent to defraud his creditors or any of them, he has made or suffered any gift, delivery or transfer of any property, or changed, removed or concealed any property; or
- (c) that the debt or liability in question was contracted or incurred by him by, or by reason of, fraud or false pretence or breach of trust committed by him; or
- (d) that forbearance thereof was obtained by fraud or false pretence; or
- (e) that the debt or liability was wilfully contracted or incurred by him without his having had at the same time a reasonable expectation of being able to pay or discharge it.

(ii) Upon such investigation the Court may order any debt to be paid by instalments and may also order that upon default of payment of any instalment the judgment-debtor shall be committed to the civil prison for a term not exceeding six months if the Court be the Supreme Court, and six weeks if the Court be an inferior Court.

**329.** No imprisonment under section 328 shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the property of the person imprisoned in the same manner as if such imprisonment had not taken place.

Imprisonment not to operate as satisfaction.

**330.** Any person imprisoned under section 328 shall be discharged from custody upon a certificate, signed by the decree-holder and attested by the Registrar of the Court, a Magistrate or a solicitor, that such person has fully paid the debt and costs in respect of which he was imprisoned, or that the same have otherwise been satisfied.

Discharge from custody on satisfaction of debt.



Certificate of satisfaction.

**331.** Every decree-holder upon his debt and costs being satisfied by payment or otherwise shall, if the judgment-debtor is imprisoned, forthwith lodge with the Superintendent of the prison in which he is confined a certificate of satisfaction signed and attested as aforesaid; in default whereof the judgment-debtor or any person on his behalf may apply to the Court for an order for his discharge; and the Court, upon notice being given to the decree-holder and on proof that the debt has been satisfied, shall order the discharge of the judgment-debtor and may award any sum not exceeding twenty-five dollars to be paid by the decree-holder to the judgment-debtor as compensation for the default made by the decree-holder by not lodging such certificate of satisfaction as aforesaid.

Judicial Commissioners may prescribe subsistence scales for judgment-debtors.

**332.** (i) The Judicial Commissioners, with the approval of the Chief Secretary, may from time to time prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

(ii) No judgment-debtor shall be arrested or detained in custody under the provisions of section 325 or section 328 unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court or during the period of his detention, as the case may be.

(iii) Where a judgment-debtor is committed to the civil prison under the provisions of section 328, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been prescribed, as it considers sufficient with reference to the class to which he belongs.

(iv) The monthly allowance fixed by the Court shall be supplied by the party on whose application the commitment has been made by monthly payments in advance before the first day of each month.

(v) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is received at the prison, and the subsequent payments (if any) shall be made to the officer in charge of the prison.

(vi) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

### CHAPTER XXIII.

#### INSOLVENT JUDGMENT-DEBTORS.

Power to apply for declaration of insolvency.

**333.** (i) Any judgment-debtor against whose property an order of attachment has been made in execution of a decree for the payment of money may apply in writing to be declared an insolvent.

(ii) Any holder of a decree for the payment of money may apply in writing that the judgment-debtor may be declared an insolvent.

(iii) Every such application shall be made to the Supreme Court.



**334.** (i) The application, when made by the judgment-debtor, shall set forth Contents of application.

- (a) that an order for the attachment of his property has been made and the Court by which the order of attachment was made;
- (b) the amount, nature and particulars of his property, and the value of any such property not consisting of money;
- (c) the place or places in which such property is to be found;
- (d) his willingness to put it at the disposal of the Court;
- (e) the amount and particulars of all pecuniary claims against him; and
- (f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

(ii) The application, when made by the holder of a decree for the payment of money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder and the place where the judgment-debtor resides.

**335.** The application shall be signed and verified by the applicant in the manner hereinbefore prescribed for signing and verifying plaints. Signing and verification of application.

**336.** (i) The Court shall fix a day for hearing the application and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be posted in Court and served at the applicant's expense Service of copy of application and notice.

- (a) where the applicant is the judgment-debtor—on the holder of the decree in execution of which the order of attachment was made, or on the solicitor of such decree-holder, and on the other creditors (if any) mentioned in the application;

- (b) where the applicant is the decree-holder—on the judgment-debtor or his solicitor.

(ii) The Court may, if it thinks fit, publish notice of the application at the applicant's expense in the *Gazette* and in such local newspapers as it thinks fit.

(iii) Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section other than payments under sub-section (ii) if satisfied that he is unable to make them.

**337.** The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application. Power to serve other creditors

**338.** (i) On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their solicitors, as to the causes of his insolvency and his circumstances and future means of payment, and shall hear the decree-holder, the other creditors mentioned in the application and the other persons (if any) alleging themselves to be creditors; and the Court may allow such witnesses to be examined as it may consider necessary. Procedure at hearing.



(ii) Where a decree-holder applies for a declaration of insolvency against a judgment-debtor and such declaration is granted by the Court, the examination of the judgment-debtor shall be adjourned until after the filing of the statement prescribed by section 343, or he may be re-examined after filing such statement.

Declaration of  
insolvency and  
appointment of  
receiver.

**339.** (i) Where the Court is satisfied that the statements in the application are substantially true, the Court may declare the judgment-debtor to be an insolvent and shall in such case make an order appointing a receiver of his property.

(ii) Where the Court is not so satisfied, it shall make an order rejecting the application.

Creditors to  
prove their  
debts. Schedule  
to be framed.

**340.** (i) The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors, and their respective debts, and shall frame a schedule of such persons and debts, a copy of which shall be posted in the Court-house; and the declaration under the last preceding section, hereinafter called "the declaration of insolvency," shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

(ii) No creditor of the insolvent shall have any remedy against the property of the insolvent except under this Chapter, but nothing in this Chapter shall affect the power of any secured creditor to realize his security.

(iii) Nothing in this Chapter shall entitle a partner in an insolvent firm or, where he has died before the insolvency, his legal representative to prove in competition with the creditors of the firm.

(iv) Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

(v) Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

(vi) In the case of any application under sub-section (iv) or sub-section (v), the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors and hearing their objections, if any, may comply with or reject the application.

Stay of  
proceedings  
where majority  
of creditors  
reside in the  
Colony.

**341.** If in any case where a judgment-debtor has been declared to be an insolvent under this Chapter it appears to the Court, upon an application by the receiver (if any) or by any creditor or other person interested, that a majority of the creditors in number and value are resident in the Colony and that from the situation of the property of the insolvent or for other causes his property ought to be



distributed among the creditors under the bankruptcy laws of the Colony, the Court after such enquiry as to it seems fit may stay all proceedings under this Chapter and may rescind the order (if any) appointing a receiver upon such terms (if any) as it thinks fit.

**342.** (i) Every order under this Chapter appointing a receiver shall be published in the *Gazette*, and every such order shall operate to vest in the receiver all the insolvent's property (except the particulars specified in the first proviso to section 265), whether set forth in his application or not. Every declaration of insolvency shall also be published in the *Gazette*. Effect of order appointing receiver.

(ii) The receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid.

**343.** (i) Where a judgment-debtor is declared insolvent on the application of a decree-holder, the insolvent shall, within fourteen days after the declaration of insolvency is made, file in Court a statement setting forth the particulars prescribed by clauses (b), (c), (e) and (f) of section 334. Where judgment-debtor is declared insolvent on application of decree-holder.

(ii) Such statement shall be signed and verified by the insolvent in the manner hereinbefore prescribed for signing and verifying plaints.

(iii) Where the Court, when it makes the declaration of insolvency, is satisfied by evidence on oath that there is reasonable ground for suspecting that the insolvent is about to abscond, the Court may order that the insolvent be arrested and detained in the civil prison until he has filed the statement prescribed by this section or until the expiration of six months from his arrest, whichever shall first happen.

(iv) Where the insolvent not having been arrested under sub-section (iii), neglects or refuses to file the statement within the period prescribed by sub-section (i), the Court may order him to be arrested and detained in the civil prison until he has filed such statement or until the expiration of six months from his arrest, whichever shall first happen.

**344.** (i) The receiver shall proceed under the direction of the Court Duty of receiver.

- (a) to convert into money the insolvent's property vested in the receiver as aforesaid;
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to the Government;
- (c) to pay the decree-holder's costs, where the declaration of insolvency has been made on the application of a decree-holder;
- (d) to discharge, according to their respective priorities, all debts secured by mortgage of, or charge or lien on, the insolvent's property;
- (e) to pay the wages of labourers (if any) in accordance with the provisions of Chapter XI of "The Labour Code, 1912";



(f) to pay all wages or salary of every clerk, servant, labourer or workman, other than labourers referred to in clause (e), not exceeding two hundred dollars, in respect of services rendered to the insolvent during three months before the date of the declaration of insolvency.

(g) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference.

(ii) Such receiver, not being a salaried officer of the Government other than an official receiver, may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall, subject to the provisions of this Chapter, deliver the surplus, if any, to the insolvent or his legal representative.

(iii) In any distribution among creditors under this section the receiver shall make provision for debts appearing from the statements of the insolvent or otherwise to be due to persons resident in places so distant from the place where the receiver is acting that in the ordinary course of communication they have not had sufficient time to produce evidence of the amount and particulars of their pecuniary claims against the insolvent or to establish them if disputed and also for debts the subject of claims not yet determined. He shall also make provision for any disputed claims and for the expenses necessary for the administration of the estate or otherwise.

Effect of  
discharge.

**345.** An insolvent discharged under section 346, or duly liquidating his debts under section 349, shall not be arrested or imprisoned on account of any of the scheduled debts; but, subject to the provisions of the next following section, the property of an insolvent, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 265 and except the property vested in the receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied in full or until the expiry of twelve years from the date of the declaration of insolvency.

Declaration  
that insolvent  
is discharged  
from liability.

**346.** In the event of the receiver certifying, or of the Court being otherwise satisfied, that the insolvent has placed the receiver in possession of all the insolvent's property which has become vested in the receiver or that the insolvent has done everything in his power for that purpose, then, if the aggregate amount of the scheduled debts does not exceed one hundred dollars the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third or after the expiry of twelve years from the declaration of insolvency the Court shall, declare the insolvent to be discharged from further liability in respect of such debts.

Procedure in  
case of dishonest  
debtor.

**347.** (i) Where at the examination under section 338 it is proved that the judgment-debtor has

(a) been guilty, in his application or on his examination, of any concealment or of wilfully making any false statement as to the debts due by him or respecting the property belonging to him, whether in possession or in expectancy, or held in trust for him, or



(b) fraudulently concealed, transferred or removed any property, the Court may sentence him by order in writing in a summary manner to imprisonment of either description for a term which may extend to three months.

(ii) Instead of sentencing the judgment-debtor as aforesaid the Court may order the Public Prosecutor to prosecute him for committing any offence referred to in this section, to be specified in such order, and the judgment-debtor if convicted shall be liable to imprisonment of either description for a term which may extend to one year.

#### DISCOVERY OF INSOLVENT'S PROPERTY.

**348.** (i) The Court may, on the application of the receiver or of a creditor, at any time after a declaration of insolvency has been made against a judgment-debtor summon before it the insolvent or his wife, or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

Court may enquire as to insolvent's property.

(ii) Where any person so summoned, after having been tendered a reasonable sum for his expenses, refuses, without lawful impediment made known to the Court at the time of its sitting and allowed by it, to come before the Court at the time appointed, or to produce any such document, the Court may, by warrant, cause him to be arrested and brought before it for examination.

(iii) The Court may examine on oath any person attending or brought before it under this section concerning the insolvent, his dealings or property.

(iv) Where any person on examination before the Court admits that he is indebted to the insolvent, the Court may, on the application of the receiver or of a creditor, order him to pay to the receiver at such time and in such manner as to the Court seems expedient the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

(v) Where any person on examination before the Court admits that he has in his possession any property belonging to the insolvent, the Court may, on the application of the receiver or of a creditor, order him to deliver to the receiver such property or any part thereof at such time and in such manner and on such terms as to the Court may seem just.

#### COMPOSITION OR SCHEME OF ARRANGEMENT.

**349.** (i) The scheduled creditors of a judgment-debtor who has been declared insolvent may resolve to entertain a proposal for a composition in satisfaction of the debts due to them by the insolvent or a proposal for a scheme of arrangement of the insolvent's affairs.

Composition or scheme in satisfaction of debts of an insolvent.

(ii) The composition or scheme shall not be binding on the creditors unless it is accepted by a majority in number, representing three-fourths in value, of the scheduled creditors and is approved by the Court.



(iii) The insolvent or any scheduled creditor may apply to the Court to approve the composition or scheme, and any scheduled creditor may be heard either for or against such application.

(iv) Such application shall not be heard until the Court is satisfied

(a) that the insolvent has been thoroughly examined before the Court as to the causes of his insolvency, his circumstances and his future means of payment; and

(b) that notice, by advertisement or otherwise, has been given to every creditor of the insolvent in sufficient time to enable such creditor to apply to the Court, if he should so desire, for an order directing his name to be inserted in the schedule.

(v) Notice of the time appointed for hearing the application shall be sent by the Court to each of the scheduled creditors.

(vi) Where the Court is of opinion that the terms of the composition or scheme are not reasonable or are not calculated to benefit the general body of creditors, the Court shall, and in any other case the Court may at its discretion, refuse to approve the composition or scheme.

(vii) Where the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme or by the terms being embodied in an order of the Court.

(viii) A composition or scheme accepted and approved in pursuance of this section shall be binding on all creditors of the insolvent so far as relates to any debts due to them by the insolvent which have been or might have been scheduled.

(ix) A certificate of the Court that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(x) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

(xi) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed by law to be so paid in the distribution of the property of an insolvent.

(xii) No costs incurred by a debtor of, or incidental to, an application to approve a composition or scheme shall be allowed out of the estate if the Court refuses to approve the composition or scheme.

(xiii) At the time of approving a composition or scheme the Court may correct or supply any accidental or formal slip, error or omission therein, but no alteration in the substance of the composition or scheme shall be made.

(xiv) When a composition or scheme is approved, the receiver (if any) shall forthwith put the debtor (or, as the case may be, the trustee under the composition or scheme) into possession of the debtor's property. The Court shall also rescind the declaration of insolvency and the order (if any) appointing a receiver.



(xv) In every case of a composition in which a trustee is not appointed to distribute such composition, the Court may require a trustee to be appointed and may refuse to approve the composition unless and until this is done.

(xvi) Where under a composition or scheme of arrangement a trustee is appointed to distribute a composition or to administer the debtor's affairs or to manage his business, such trustee shall, unless expressly exempted therefrom by order of the Court, give security to the satisfaction of the Court for the due performance of his trust. The Court may refuse to approve the composition or scheme unless such security is given.

(xvii) Where default is made in payment of any instalment due in pursuance of a composition or scheme, or where it appears to the Court on satisfactory evidence that the composition or scheme cannot in consequence of legal difficulties or for any sufficient cause proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor again declare the debtor insolvent and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme. Where a debtor is declared insolvent under this sub-section, any debt valid in other respects which has been contracted before the date of the declaration of insolvency may be entered by the Court in the schedule.

#### BANKRUPTCY MATTERS IN THE COLONY.

**350.** The Court and the officers thereof shall in all matters of insolvency and bankruptcy act in aid of and be auxiliary to the Courts of the Colony having jurisdiction in bankruptcy; and an order of any such Court of the Colony seeking aid with a request to the Court shall be deemed sufficient to enable the Court to exercise in respect of the matters directed by the order such jurisdiction as either the Court of the Colony which made the request or the Court could exercise in respect of similar matters within their several jurisdictions.

Action in aid of Courts of the Colony.

## PART II.

### INCIDENTAL PROCEEDINGS.

#### CHAPTER XXIV.

##### DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

**351.** The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

No abatement by party's death, if right to sue survives.

##### *Illustrations*

(a) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before decree. The right to sue survives to C, and the suit does not abate.

(b) In the same case all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.



Death of one of several plaintiffs or defendants, where right to sue survives.

**352.** Where there are more plaintiffs or defendants than one and any of them dies, and the right to sue survives to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

Death of one of several plaintiffs, where right to sue does not survive to surviving plaintiffs alone.

**353.** Where there are more plaintiffs than one and any of them dies, and the right to sue does not survive to the surviving plaintiff or plaintiffs alone but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may cause the legal representative, if any, of the deceased plaintiff to be made a party and shall thereupon cause an entry to that effect to be made on the record and proceed with the suit.

Death of sole, or sole surviving, plaintiff.

**354.** Where a sole plaintiff or sole surviving plaintiff dies, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall thereupon enter his name and proceed with the suit.

Where no application by representative of deceased plaintiff.

**355.** Where within six months after the death of a sole plaintiff or sole surviving plaintiff no such application is made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may

- (a) make an order that the suit shall abate and, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff, or
- (b) on the application of the defendant, and upon such terms as to costs or otherwise as the Court thinks fit, make such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Question as to who is representative of deceased plaintiff.

**356.** Where a question arises as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit or decide at or before the hearing of the suit who shall be deemed to be such legal representative for the purpose of prosecuting the suit.

Death of one of several defendants or of sole, or sole surviving, defendant.

**357.** (i) Where there are more defendants than one and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone, and also where a sole defendant or sole surviving defendant dies and the right to sue survives, the plaintiff may make an application to the Court specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant and whom he desires to be made the defendant in his stead.

(ii) The Court shall thereupon enter the name of such representative on the record in the place of such defendant and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.



(iii) Any person so made defendant may object that he is not the legal representative of the deceased defendant or may make any defence appropriate to his character as such representative.

(iv) Where the plaintiff fails to make such application within six months after the death of the defendant in question, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

(v) The legal representative of a deceased defendant may apply to be made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

**358.** (i) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone. Suit not abated by marriage of female party.

(ii) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

**359.** (i) The insolvency of a plaintiff in any suit which the receiver appointed under the last preceding Chapter might maintain for the benefit of his creditors shall not bar the suit, unless such receiver declines to continue the suit or to give security for the costs thereof within such time as the Court may order. When plaintiff's insolvency bars suit.

(ii) Where the receiver neglects or refuses to continue the suit or to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

**360.** (i) Where a suit abates or is dismissed under this Chapter, no fresh suit shall be brought on the same cause of action. Effect of abatement or dismissal.

(ii) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

**361.** In other cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them and hearing their objections, if any, be continued by or against the person to or upon whom such interest has come or devolved either in addition to or in substitution for the person from whom it has passed, as the case may require. Interests created or passing *pendente lite*.



## CHAPTER XXV.

## WITHDRAWAL AND ADJUSTMENT OF SUITS.

Withdrawal of  
suit or  
abandonment  
of part of claim

**362.** (i) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(ii) Where the Court is satisfied

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant to the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(iii) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-section (ii), he shall be liable for such costs as the Court may award and shall be precluded from instituting a fresh suit in respect of such subject-matter or such part of the claim.

(iv) Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law  
not affected by  
first suit.

**363.** In any fresh suit instituted on permission granted under the last preceding section the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Compromise of  
suit.

**364.** Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction.

## CHAPTER XXVI.

## PAYMENT INTO COURT.

Deposit by  
defendant of  
amount in  
satisfaction of  
claim.

**365.** The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of  
deposit.

**366.** Notice in writing of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on  
deposit not  
allowed to  
plaintiff after  
notice.

**367.** No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.



**368.** (i) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he shall give notice in writing to the defendant to that effect and may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Where plaintiff accepts deposit as satisfaction in part or in full.

(ii) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

#### *Illustrations.*

(a) A owes B \$100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B \$100 and is willing to pay him that sum without suit. B claims \$150 and sues A for that amount. On the plaint being filed A pays \$100 into Court and disputes only his liability to pay the remaining \$50. B accepts the \$100 in full satisfaction of his claim. The Court should order him to pay A's costs.

### CHAPTER XXVII.

#### SECURITY FOR COSTS.

**369.** (i) Where, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of the Federated Malay States and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within the Federated Malay States other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs to give security, within a time to be fixed by the order, for the payment of all costs incurred and likely to be incurred by any defendant.

Where security for costs may be required from plaintiff.

(ii) Whoever leaves the Federated Malay States under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of the Federated Malay States within the meaning of sub-section (i).

(iii) On the application of any defendant in a suit for money in which the plaintiff is a woman the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within the Federated Malay States other than the property in suit.



Effect of failure  
to furnish  
security.

**370.** (i) In the event of such security not being furnished within the time fixed the Court shall make an order dismissing the suit, unless the plaintiff or plaintiffs are permitted to withdraw therefrom under the provisions of section 362 or show good cause why such time should be extended, in which case the Court may extend it.

(ii) Where a suit is dismissed under this section, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, but he may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time fixed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

(iii) The dismissal shall not be set aside unless notice in writing of such application has been served on the defendant.

#### CHAPTER XXVIII.

##### COMMISSIONS AND LETTERS OF REQUEST.

###### COMMISSIONS TO EXAMINE WITNESSES.

Where Court  
may issue com-  
mission to  
examine  
witness within  
the jurisdiction.

**371.** Any Court may in any suit issue a commission for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court, or who is from sickness or infirmity unable to attend the Court, or who lives at such a distance from the Court that in the opinion of the Court it is unreasonable to compel him to attend the Court.

Order for  
commission.

**372.** An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

To whom com-  
mission may  
issue.

**373.** A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Commission to  
examine person  
resident beyond,  
or about to  
leave, the  
jurisdiction.

**374.** (i) Any Court may in any suit issue a commission for the examination of

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court.

(ii) Such commission may be issued to any person willing to act whom the Court thinks fit to execute the same.

Commission to  
examine  
witness not  
within the  
Federated  
Malay States  
or not within  
reasonable  
distance.

**375.** Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within the Federated Malay States, or at any place within the Federated Malay States but at such a distance from the Court that in the opinion of the Court it is unreasonable to compel him to attend the Court, is satisfied that his evidence is necessary, the Court may issue such commission.

Court to  
examine  
witness  
pursuant to  
commission.

**376.** Every Court in the Federated Malay States receiving a commission for the examination of any person shall examine him pursuant thereto.



**377.** Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

Return of commission with depositions of witnesses.

**378.** Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

When depositions may be read in evidence.

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court; or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

**379.** The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by—

Provisions to apply to commissions issued by foreign Courts.

- (a) Courts situate in the United Kingdom or in any British Colony or Possession or in any State under the protection of His Britannic Majesty;
- (b) Courts of any foreign country for the time being in alliance with His Britannic Majesty.

#### LETTERS OF REQUEST TO EXAMINE WITNESSES.

**380.** If in any case the Supreme Court or a Judicial Commissioner shall so order, there shall be issued a request to examine witnesses, in lieu of a commission, where the witnesses to be examined are resident elsewhere than in the Federated Malay States. Such order and request shall be in the forms in the third schedule, with such variations as circumstances may require; and every such request shall be accompanied by a list of questions to be put to the witnesses and by a translation of the request and of the said questions into the language of the country in which the witnesses are to be examined, unless the English language be the language of such country.

Letters of request.

#### COMMISSIONS FOR LOCAL INVESTIGATIONS.

**381.** In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property or the amount of any mesne profits or damages or annual net profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, provided that such person be willing to act, directing him to make such investigation and to report thereon to the Court:

Commission to make local investigation.

Provided that, when the Resident of a State has made and published in the *Gazette* rules as to the persons to whom such commissions shall be issued in such State, the Court shall be bound by such rules.



Procedure of  
Commissioner.

**382.** (i) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(ii) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court as to any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

#### COMMISSIONS TO EXAMINE ACCOUNTS.

Commission to  
examine or  
adjust accounts.

**383.** In any suit in which an examination or adjustment of accounts is necessary the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Court to give  
necessary  
instructions to  
Commissioner.

**384.** (i) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry or is also to report his own opinion on the point referred for his examination.

(ii) The proceedings and report, if any, of the Commissioner shall be evidence in the suit; but where the Court has reason to be dissatisfied with them, it may direct such further enquiry as it shall think fit

#### COMMISSIONS TO MAKE PARTITION; SALE IN LIEU OF PARTITION.

Commission to  
make partition  
of immovable  
property.

**385.** (i) In any suit in which the partition of immovable property appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

(ii) The Commissioners shall, after such enquiry as may be necessary, divide the same into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(iii) The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(iv) Where the Court confirms or varies the report or reports, it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports, it shall either issue a new commission or make such other order as it shall think fit.



(v) Upon any partition the Court shall make such order as may be just respecting any revenue payable to the Government in respect of the immovable property.

**386.** (i) Instead of issuing a commission under section 385, if it appears to the Court that a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a partition of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly and may give all necessary or proper consequential directions.

Power to order sale in lieu of partition.

(ii) On any such sale the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters, as to the Court seem reasonable.

(iii) A request for sale under sub-section (i) may be made on the part of a minor, a person of unsound mind or a person under any other disability by the next friend, guardian, committee in lunacy or other person authorized to act on behalf of the person under such disability.

#### GENERAL PROVISIONS.

**387.** Before issuing any commission or letter of request under this Chapter the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission or in connection with the letter of request to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission or letter of request is issued.

Expenses of commission or letter of request to be paid into Court.

**388.** Any Commissioner appointed under this Chapter may, unless otherwise directed by the order of appointment,

Powers of Commissioners.

- (a) examine the parties and any witness whom they or any of them may produce and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of enquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

**389.** The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of the Federated Malay States, and for the purposes of this section the Commissioner shall be deemed to be a Civil Court.

Summoning, attendance and examination of witnesses before Commissioner.

**390.** (i) Where a commission is issued under this Chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or solicitors.

Parties to appear before Commissioner.

(ii) Where all or any of the parties do not so appear, the Commissioner may proceed *ex parte*.



## CHAPTER XXIX.

## AID TO FOREIGN TRIBUNALS.

## SERVICE OF FOREIGN LEGAL PROCESS IN THE FEDERATED MALAY STATES.

Service of  
foreign process  
in pursuance of  
letter of  
request.

- 391.** (i) Subject to any special provision made by section 596 of this Code or otherwise, where in any civil or commercial matter pending before a Court or Tribunal of a foreign country a letter of request from such Court or Tribunal for service on any person in the Federated Malay States of any process or citation in such matter is transmitted to the Supreme Court by the Chief Secretary with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted:
- (a) The letter of request for service shall be accompanied by a translation thereof in the English language and by two copies of the process or citation to be served and two copies thereof in the English language;
  - (b) Service of the process or citation shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the provisions of this Code regulating service of process;
  - (c) After service has been effected the process server shall return to the Registrar or an Assistant Registrar of the Supreme Court one copy of the process and shall verify by affidavit, to be made before the Registrar or Assistant Registrar, a return stating the time when and the manner in which the process was served;
  - (d) The particulars of charges for the cost of effecting service shall be submitted to the Registrar or Assistant Registrar, who shall certify the correctness of the charges or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges and certificate shall be forwarded to the Chief Secretary.
  - (e) The Registrar or Assistant Registrar shall transmit to the Chief Secretary the letter of request for service received from the foreign country together with the evidence of service with a certificate appended thereto duly sealed with the seal of the Supreme Court. Such certificate shall be in the form in the third schedule.
- (ii) The Supreme Court may make all such orders for substituted service or otherwise as may be necessary to give effect to this section.

## OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS.

Evidence for  
foreign  
Tribunals.

- 392.** (i) Where any civil or commercial matter is pending before a Court or Tribunal of a foreign country and it is made to appear to the Supreme Court or a Judge thereof, by Commission Rogatoire or letter of request or other evidence as hereinafter provided, that such Court or Tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the Federated Malay States, the Court or a Judge may, on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of such foreign Court or Tribunal, and on



production of the Commission Rogatoire or letter of request or such other evidence as the Court or a Judge may require, order the examination upon oath, upon interrogatories or otherwise, of such witness or witnesses accordingly; and the Court or a Judge may by the same order, or by any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and may give all such directions as to the time, place and manner of such examination and all other matters connected therewith as may appear reasonable and just; and any such order may be enforced in like manner as an order made by such Court or Judge in a suit pending in such Court or before such Judge.

(ii) An order under sub-section (i) shall be in the form in the third schedule, with such variations as circumstances may require.

(iii) The examination shall be taken before the Registrar or an Assistant Registrar who shall append to the depositions a certificate, in the form in the third schedule with such variations as circumstances may require, duly sealed with the seal of the Supreme Court and shall forward the depositions so certified, and the Commission Rogatoire or letter of request, if any, to the Chief Secretary for transmission to the foreign Court or Tribunal requiring the same.

(iv) An order under sub-section (i) may, if the Court or a Judge shall think fit, direct the said examination to be taken in such manner as may be requested by the Commission Rogatoire or letter of request from the foreign Court, or therein signified to be in accordance with the practice or requirements of such Court or Tribunal, or which may for the same reason be requested by the applicant for such order. But where no such special directions are given in the order for examination, the same shall be taken in the manner prescribed by Chapter XVIII.

(v) Where a Commission Rogatoire or letter of request, as mentioned in sub-section (i), is transmitted to the Supreme Court by the Chief Secretary with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the Court by the agents in the Federated Malay States of any of the parties to the action or matter in the foreign country, the Registrar shall transmit the same to the Legal Adviser, who may thereupon make such applications and take such steps as may be necessary to give effect to such Commission Rogatoire, or letter of request, in accordance with this section.

### PART III.

#### SUITS IN PARTICULAR CASES.

##### CHAPTER XXX.

###### SUITS BY OR AGAINST THE GOVERNMENT.

**393.** Suits by or against the Government of the Federated Malay States shall be instituted by or against (as the case may be) "the Chief Secretary to Government," a body corporate; and the said body corporate shall not be sued except as in this Chapter provided.

Government of  
the Federated  
Malay States.



Government of  
a State.

**394.** Suits by or against the Ruler or Government of a State which is one of the Federated Malay States shall be instituted by or against (as the case may be) "the State of Perak," "the State of Selangor," "the State of Negri Sembilan" or "the State of Pahang," as the case may be, and each of the said States may, subject to the provisions of this Chapter, sue and be sued as a body corporate.

Wording of  
plaint.

**395.** In suits by a State, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "the State of Perak," "the State of Selangor," "the State of Negri Sembilan" or "the State of Pahang," as the case may be.

Subscription  
and verification  
of plaint.  
Appearances  
and acts.

**396.** (i) In suits by the Chief Secretary or by a State the plaint may be subscribed and verified on behalf of the Chief Secretary or of such State by any public officer or other person who is able to depose to the facts of the case.

(ii) Any public officer or other person, authorized either specially or generally in writing by the Chief Secretary to act for him or by the Resident of a State to act for such State in respect of any judicial proceeding, shall be deemed to be the recognized agent by whom appearances, acts and applications under this Code in respect of such judicial proceeding may be made or done on behalf of the Chief Secretary or of such State. The Legal Adviser, or any solicitor specially authorized by the Chief Secretary or by the Resident of a State, or any such recognized agent as aforesaid, may in any case appear as advocate for the Chief Secretary or for such State, as the case may be.

Plaint to be  
submitted.

**397.** (i) In suits against the Chief Secretary to Government or against a State, after the plaint has been admitted, and before a summons is issued, the Judge shall transmit the plaint,

(a) in suits against the Chief Secretary to Government, to the Chief Secretary, and

(b) in suits against a State, to the Resident of such State, for consideration.

(ii) The Chief Secretary or Resident, as the case may be, shall on receipt of a plaint transmitted to him under sub-section (i) consider the same and shall, if it appears to him that the claim is a *bona fide* claim which cannot be amicably settled, by endorsement under his hand on the plaint order that right be done and nominate a public officer or other person to accept service of a summons on behalf of the defendant in the suit.

(iii) In the event of refusal to endorse the plaint under sub-section (ii), the plaintiff may appeal,

(a) where the refusal is by the Chief Secretary, to the High Commissioner, and

(b) where the refusal is by a Resident, to the Chief Secretary, and thereupon the High Commissioner or the Chief Secretary, as the case may be, may, if he shall think fit, so endorse the plaint.

(iv) Upon the return of the plaint, so endorsed, to the Judge, a summons shall be issued and the suit shall thereafter, subject to the provisions of this Chapter, proceed as an ordinary suit for a similar purpose between subject and subject.



(v) Where

(a) the Chief Secretary, or on appeal from him the High Commissioner, or

(b) a Resident, or on appeal from him the Chief Secretary,

refuses to endorse the plaint as provided in sub-sections (ii) and (iii), the Judge shall reject the plaint and refund to the plaintiff any Court fees which the plaintiff may have paid upon presenting the plaint.

**398.** Any claim, against the Government of the Federated Malay States or against the Ruler or Government of a State, which

Claims which may be enforced by suit.

(a) is founded on the use or occupation or right to use or occupation of State lands, or

(b) arises out of the revenue laws, or

(c) arises out of any contract which has been or may be or should have been entered into on behalf of the Government of the Federated Malay States by or by the authority of the Chief Secretary, or on behalf of the Ruler of such State by or by the authority of the Government of such State, and which would if such claim had arisen between subject and subject afford ground for a suit under this Code, or

(d) is for damages or compensation in respect of a matter arising in the Federated Malay States or in such State, as the case may be, or

(e) is a claim, not included in the preceding clauses, which might lawfully be enforced as between subject and subject,

may, subject to the provisions of this Chapter, be enforced by suit against the Chief Secretary to Government or against such State, as the case may be, under this Code.

**399.** A public officer, acting on behalf of a known department of the Government of the Federated Malay States or of a State and in discharge of duties incident to his public employment, is not liable personally upon contracts made by him in that capacity; nor does he impliedly warrant that he has in fact authority to enter into such contracts.

Public officer acting on behalf of the Government not liable personally.

**400.** (i) Contracts made in the Federated Malay States for the public service of the said States by a Federal officer of the said States duly gazetted to his office shall be deemed to be made by the authority of the Government of the said States when executed or signed by the Chief Secretary or by a Federal officer of the said States duly authorized in writing by the Chief Secretary, either generally for all contracts in his department or for the particular case, to sign or execute such contracts.

Contracts made on behalf of the Government.

(ii) Contracts made in a State for the public service of such State by a public officer of such State duly gazetted to his office shall be deemed to be made by the authority of the Ruler or Government of such State when executed or signed by the Resident of such State or by a public officer of such State duly authorized in writing by the Resident, either generally for all contracts in his department or for the particular case, to sign or execute such contracts.



(iii) Contracts made in England by the Crown Agents for the Colonies shall, so far as the same come within the jurisdiction of the Courts of the Federated Malay States, be deemed,

(a) if made on behalf of the Government of the Federated Malay States, to be contracts made for the public service of the said States by a Federal officer of the said States, and,

(b) if made on behalf of the Ruler or Government of a State, to be contracts made for the public service of such State by a public officer of such State.

(iv) No contracts except those made in manner hereinbefore provided for contracts on behalf of the Government of the Federated Malay States shall be deemed to be made by the authority of the said Government; and no contracts except those made in manner hereinbefore provided for contracts on behalf of the Ruler or Government of a State shall be deemed to be made by the authority of the Ruler or Government of such State.

(v) This section, so far as it relates to contracts on behalf of the Government of the Federated Malay States, applies only to contracts made after the commencement of this Enactment.

(vi) Nothing in this section applies to contracts relating to the use or occupation of State lands.

Costs.

**401.** In all suits under this Code by or against the Chief Secretary or by or against a State, costs may be adjudged by the Court for and against the Chief Secretary or such State on the same principles on which costs are adjudged in similar matters between subject and subject.

Fees.

**402.** Fees for matters done in the Courts for the Chief Secretary or for a State shall not be payable in the first instance; but where judgment is given for the Chief Secretary or for such State with costs, the amounts which otherwise would have been payable by the Chief Secretary or by such State as fees shall be chargeable to and payable by the opposite party.

No interrogatories.

**403.** Interrogatories shall not be administered to, nor shall an order for the discovery or inspection of documents be made against, the Chief Secretary or a State, or any public officer or other person as representing the Chief Secretary or a State.

Execution not to issue.

**404.** Where in any suit a decree is passed against the Chief Secretary or against a State, no execution shall issue thereon, but a copy of such decree, under the seal of the Court and signature of the Judge, shall be transmitted by the Judge to the Chief Secretary or to the Resident of such State, as the case may be, who, where the decree is for the payment of money, shall have power by warrant under his hand to direct the amount awarded by such decree to be paid by the Federal Treasurer or by the State Treasurer, as the case may be, and in case of any other decree shall have power to take such measures as may be necessary to cause the same to be carried into effect.

Suits to be in accordance with this Chapter.

**405.** All suits which may be lawfully brought by or against the Chief Secretary or a State shall be brought in accordance with the provisions of this Chapter and not otherwise.



## CHAPTER XXXI.

## SUITS BY OR AGAINST MILITARY MEN.

**406.** (i) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

(ii) The authority shall be in writing and shall be signed by the officer or soldier in the presence of his commanding officer, or the next subordinate officer if the party be himself the commanding officer.

(iii) Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(iv) When so filed the countersignature shall be sufficient proof that the authority was duly executed and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this Chapter the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, or detachment to which the officer or soldier belongs.

**407.** Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a solicitor to prosecute or defend the suit on behalf of such officer or soldier.

Person so authorized may act personally or appoint solicitor.

**408.** Processes served upon any person authorized by an officer or a soldier, as in section 406 provided, or upon any solicitor appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his solicitor.

Service on person so authorized, or on his solicitor, to be good service.

**409.** (i) Where an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

Service on officers and soldiers.

(ii) The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

(iii) If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

**410.** (i) Where, in any proceedings under this Code, a warrant of arrest or other process is to be executed within the limits of a cantonment, barrack or military station, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

Execution of warrant of arrest in cantonments, etc.

(ii) The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.



## CHAPTER XXXII.

## SUITS BY OR AGAINST CORPORATIONS.

Signature  
and verification  
of plaintiff.

**411.** In suits by a corporation the plaint may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on  
corporation.

**412.** Where the suit is against a corporation, the summons may be served

(a) by leaving it at the registered office (if any) of the corporation ; or

(b) by sending it by post in a letter addressed to the corporation at the office, or, if there be more offices than one, at the principal office of the corporation, whether such office be situated within the Federated Malay States or elsewhere ;

(c) by giving it to the secretary or to any director or other principal officer of the corporation.

Personal  
attendance of  
officer.

**413.** The Court may at any stage of the suit require the personal appearance of the secretary or of any director or other principal officer of the corporation resident in the Federated Malay States who may be able to answer material questions relating to the suit.

## CHAPTER XXXIII.

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON  
BUSINESS IN NAMES OTHER THAN THEIR OWN.

Suing of  
partners in  
name of firm.

**414.** (i) Any two or more persons claiming or being liable as partners and carrying on business in the Federated Malay States may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners of such firm, to be furnished and verified in such manner as the Court may direct.

(ii) Where persons sue or are sued as partners in the name of their firm under sub-section (i), it shall, in the case of any document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such document is signed, verified or certified by any one of such persons.

Disclosure of  
partners'  
names.

**415.** (i) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their solicitor shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(ii) Where the plaintiffs or their solicitor fail to comply with any demand made under sub-section (i), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.



(iii) Where the names of the partners are declared in the manner referred to in sub-section (i), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint;

Provided that all the proceedings shall nevertheless continue in the name of the firm.

**416.** Where persons are sued as partners in the name of their firm, the summons shall be served either Service of summons.

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within the Federated Malay States upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without the Federated Malay States:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within the Federated Malay States whom it is sought to make liable.

**417.** (i) Notwithstanding anything contained in section 45 of the Contract Enactments, 1899 (Pahang, 1900), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit. Right of suit on death of partner.

(ii) Nothing in sub-section (i) shall limit or otherwise affect any right which the legal representative of the deceased may have

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

**418.** Where a summons is issued to a firm and is served in the manner provided by section 416, every person upon whom it is served shall be informed by notice in writing, given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and in default of such notice the person served shall be deemed to be served as a partner. Notice in what capacity served.

**419.** Where persons are sued as partners in the name of their firm and on the day fixed for the defendant to appear and answer any partner of such firm appears when the suit is called on for hearing, such appearance shall be a sufficient appearance by the firm. Appearance at the hearing.

**420.** Where a summons is served in the manner provided by section 416 upon a person having the control or management of the partnership business, it shall not be necessary for him to appear and answer unless he is a partner of the firm sued. No appearance by manager necessary.

**421.** Any person served with summons as a partner under section 416 may file a written statement denying that he is a partner, but the suit may, nevertheless, proceed against the firm provided that the requirements of section 416 are complied with. Denial of partnership.



Execution of  
decree against  
a firm.

**422.** (i) Where a decree has been passed against a firm, execution may be granted

(a) against any property of the partnership within the Federated Malay States;

(b) against any person who has admitted in his written statement that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with the summons and has not filed a written statement denying that he is a partner.

Provided that nothing in this sub-section shall be deemed to limit or otherwise affect the provisions of section 247 of the Contract Enactments, 1899 (Pahang, 1900).

(ii) Where the decree-holder claims to be entitled to cause the decree to be executed against any person, other than such a person as is referred to in sub-section (i), clauses (b) and (c), as being a partner of the firm, he may apply to the Court for leave so to do; and where the liability is not disputed, the Court may grant such leave, or where the liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in a suit may be tried and determined.

Attachment of  
debts owing  
from a firm.

**423.** Debts owing from a firm carrying on business within the Federated Malay States may be attached under Chapter XXII, although one or more partners of such firm may be resident out of the Federated Malay States, provided that some person having the control or management of the partnership business, or some partner of the firm within the Federated Malay States, is served with a copy of the prohibitory order.

Suits between  
co-partners.

**424.** This Chapter shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common, provided that such firm or firms carry on business in the Federated Malay States; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Suit against  
person carrying  
on business in  
name other  
than his own.

**425.** Any person carrying on business within the Federated Malay States in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all sections relating to proceedings against firms shall apply.

#### CHAPTER XXXIV.

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Representation  
of beneficiaries  
in suits  
concerning  
property vested  
in trustees,  
etc.

**426.** In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.



**427.** Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them :

Joinder of trustees, executors and administrators.

Provided that executors who have not proved their testator's will, and trustees, executors and administrators outside the Federated Malay States need not be made parties.

**428.** Unless the Court directs otherwise, the husband of a married executrix or administratrix shall not be a party to a suit by or against her.

Husband of married executrix not to join.

#### CHAPTER XXXV.

##### SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

**429.** Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor ; such person may be ordered to pay any costs in the suit as if he were the plaintiff.

Minor to sue by next friend.

**430.** (i) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the solicitor or other person by whom it was presented.

Where suit instituted without next friend, plaint to be taken off file.

(ii) Notice of such application shall be given to such person, and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

**431.** (i) Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

Minor to defend by guardian for the suit.

(ii) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(iii) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(iv) No order shall be made on any application under this section except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-section.

**432.** (i) Any person who is of sound mind and has attained majority may act as next friend of a minor or be appointed his guardian for the suit, provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant or, in the case of a guardian for the suit, a plaintiff.

Who may be next friend or guardian.

(ii) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian.



Representation  
of minor by  
next friend or  
guardian for  
the suit.

**433.** (i) Every application to the Court on behalf of a minor, other than an application under section 431 (ii) or section 437 or section 438 (ii), shall be made by his next friend or by his guardian for the suit.

(ii) Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the solicitor of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such solicitor.

Next friend or  
guardian not to  
receive money  
without leave  
of Court.

**434.** A next friend or guardian for the suit shall not receive or take any money or other thing on behalf of a minor at any time before decree or order, unless he has first obtained the leave of the Court and given security to its satisfaction that such money or other thing shall be duly accounted for and held for the benefit of such minor.

Next friend or  
guardian not to  
compromise  
without leave  
of Court.

**435.** (i) A next friend or guardian for the suit shall not without the leave of the Court enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(ii) Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Retirement of  
next friend.

**436.** (i) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(ii) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

Removal of next  
friend.

**437.** Where the interest of the next friend of a minor is adverse to that of the minor, or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within the Federated Malay States, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Stay of  
proceedings on  
retirement,  
removal or  
death of next  
friend.

**438.** (i) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(ii) Where the solicitor of such minor omits to take steps, within a reasonable time, to get a new next friend appointed, any person interested in the minor or in the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.



**439.** (i) Where the guardian for the suit desires to retire or does not do his duty or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Retirement, removal or death of guardian for the suit.

(ii) Where the guardian for the suit retires or is removed by the Court or dies during the pendency of the suit, the Court shall appoint a new guardian in his place.

**440.** (i) A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, shall on attaining majority elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on attaining majority.

(ii) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(iii) The title of the suit or application shall in such case be corrected so as to read thenceforth thus:

“A.B., late a minor, by C.D., his next friend, but now having attained majority.”

(iv) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(v) Any application under this section may be made *ex parte*; and it must be proved by affidavit that the late minor has attained majority.

**441.** (i) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Where minor co-plaintiff attaining majority desires to repudiate suit.

(ii) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant; and it must be proved by affidavit that the late minor has attained majority.

(iii) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(iv) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

**442.** (i) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by a next friend be dismissed on the ground that it was unreasonable or improper.

Where suit unreasonable or improper.

(ii) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit or make such other order as it thinks fit.



Guardian of  
minor represen-  
tative of  
deceased  
judgment-  
debtor.

**443.** Where execution of a decree is applied for against the representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Application of  
this Chapter to  
persons of  
unsound mind.

**444.** The provisions of this Chapter shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under any law for the time being in force.

#### CHAPTER XXXVI.

##### SUITS BY PAUPERS.

Suits may  
be brought in  
forma  
pauperis.

**445.** Subject to the following provisions, any suit may be instituted by a pauper.

*Explanation.*—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred dollars other than his necessary wearing-apparel and the subject-matter of the suit.

What suits  
excepted.

**446.** No suit shall be brought by a pauper to recover compensation for libel, slander, abusive language or assault.

Contents of  
application.

**447.** Every application for permission to sue as a pauper shall be in writing and shall contain the particulars required by section 41 with regard to plaints in suits; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

Presentation of  
application.

**448.** Notwithstanding anything contained in this Code, the application shall be presented to the Court by the applicant in person.

Examination of  
applicant.

**449.** Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant regarding the merits of the claim and the property of the applicant.

Rejection of  
application.

- 450.** The Court shall reject an application to sue as a pauper
- (a) where it is not framed and presented in the manner prescribed by sections 447 and 448; or
  - (b) where the applicant is not a pauper; or
  - (c) where he has, within the two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper; or
  - (d) where his allegations do not show a cause of action; or
  - (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

Notice of day  
for receiving  
evidence of  
applicant's  
pauperism.

**451.** Where the Court sees no reason to reject the application on any of the grounds stated in section 450, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party) for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof.



**452.** (i) On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party and may examine the applicant and shall make a memorandum of the substance of their evidence. Examination of witnesses, and decision.

(ii) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the application is required by the provisions of section 450 to be rejected.

(iii) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

**453.** Where the application is granted, it shall be numbered and registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter VI, except that the plaintiff shall not be liable to pay any Court fee (other than fees payable for service of process) in respect of any application, appointment of a solicitor or other proceeding connected with the suit. Procedure if application granted.

**454.** The Court may, of its own motion or on application by the defendant, of which at least ten days' notice in writing shall be given to the plaintiff, order the plaintiff to be dispaupered Dispaupering.

- (a) if he is guilty of vexatious or improper conduct in the course of the suit; or
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

**455.** Where the plaintiff succeeds in the suit, the Court shall calculate the amount of Court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code. Costs where pauper succeeds.

**456.** Where the plaintiff fails in the suit or is dispaupered, or where the suit is dismissed under section 95 or section 96 or section 101, the Court shall order the plaintiff, or any person made, under section 24, co-plaintiff to the suit, to pay the Court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred dollars or with imprisonment of either description for a term which may extend to six weeks. Procedure where pauper fails.

**457.** An order of refusal made under section 452 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the opposite party in opposing his application for leave to sue as a pauper. Refusal to allow applicant to sue as pauper bars subsequent application of like nature.

**458.** The costs of an application for permission to sue as a pauper and of an enquiry into pauperism are costs in the suit. Costs.



## CHAPTER XXXVII.

## INTERPLEADER.

Where  
interpleader  
suit may be  
instituted.

**459.** Where two or more persons claim adversely to one another the same debt, sum of money or other property from another person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself.

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

Plaint in such  
suit.

**460.** In every suit of interpleader the plaintiff shall, in addition to the other statements necessary for plaints, state

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs ;
- (b) the claims made by the defendants severally ; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

Payment of  
thing claimed  
into Court.

**461.** Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff shall so pay or place it before he can be entitled to any order in the suit.

Procedure  
where  
defendant is  
suing plaintiff.

**462.** Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him ; and his costs in the suit so stayed may be provided for in such suit ; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at  
first hearing.

**463.** (i) At the first hearing the Court may

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs and dismiss him from the suit ; or
- (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(ii) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(iii) Where such admissions or evidence as aforesaid do not enable the Court so to adjudicate, it may direct

- (a) that an issue or issues between the parties be framed and tried, and
- (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and  
tenants  
may not insti-  
tute inter-  
pleader-suits.

**464.** Nothing in this Chapter shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.



*Illustrations.*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

**465.** Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way. Charge for plaintiff's costs.

## PART IV.

## SPECIAL PROCEEDINGS.

## CHAPTER XXXVIII.

## SPECIAL CASE.

**466.** (i) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court and providing that, upon the finding of the Court with respect to such question, Power to state case for Court's opinion.

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, movable or immovable, specified in the agreement shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(ii) Every case stated under this section shall be divided into consecutively numbered paragraphs and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

**467.** Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement. Where value of subject-matter must be stated.

**468.** (i) The agreement, if framed in accordance with the provisions of this Chapter, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement. Agreement to be filed and numbered as suit.

(ii) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

**469.** Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein. Parties to be subject to Court's jurisdiction.



Hearing and disposal of case.

**470.** (i) The case shall be set down for hearing as a suit instituted under Chapter VI, the provisions of which shall apply to such suit so far as the same are applicable.

(ii) Where the Court is satisfied, after examination of the parties or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bond fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

#### CHAPTER XXXIX.

##### SUMMARY PROCEDURE ON CLAIMS FOR DEBT OR LIQUIDATED DEMANDS.

Institution of summary suits for debts or liquidated demands.

**471.** (i) In all suits in the Supreme Court, or in any other Court to which this Chapter applies, where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising

(a) upon a bill of exchange, promissory note, cheque or bond or upon a lease or upon any other contract, express or implied, for payment of a liquidated amount of money, or

(b) upon a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only, or

(c) upon a trust,

the plaintiff may, if the plaintiff desires to proceed summarily, be headed with the words "Summary Procedure," which heading shall be signed in the manner prescribed for the signature of plaintiffs. In every such case the summons shall be in the form contained in the third schedule, No. 161, or in such other form as the Judicial Commissioners, by notification in the *Gazette*, may from time to time prescribe.

(ii) In any case in which the plaint and summons are in accordance with the provisions of sub-section (i), the defendant shall not appear or defend the suit unless he obtains leave from the Court as hereinafter mentioned so to appear and defend.

(iii) In default of the defendant obtaining such leave or of appearance and defence in pursuance thereof the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) or, if no rate be specified, at the rate of eight per cent. per annum to the date of the decree, and a sum for costs to be fixed by a rule of the Judicial Commissioners published in the *Gazette*, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Defendant, on payment into Court or on disclosing a defence, to have leave to appear.

**472.** (i) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons or upon evidence, satisfactory to the Court, which discloses a defence or such facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.



(ii) The defendant shall not be required to pay into Court the sum mentioned in the summons or to give security therefor unless the Court thinks his defence not to be *prima facie* sustainable or feels reasonable doubt as to its good faith.

**473.** Where in a suit under this Chapter there are several defendants of whom one or more obtain leave to appear and defend and another or others of them fail to obtain such leave, the plaintiff shall be entitled to a decree, as in section 471 provided, against such as have not obtained leave to appear and defend and may proceed to execution of such decree without prejudice to his right to proceed with the suit against such as have obtained leave to defend.

Where some, only, of defendants get leave to defend.

**474.** Where it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim or that any part of his claim is admitted, the plaintiff shall be entitled forthwith to a decree for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution or otherwise as the Court may think fit; and the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Decree for part of claim.

**475.** Where in any proceeding under this Chapter it appears that there is included in the plaint a claim not being a debt or liquidated demand in money such as is referred to in section 471, the Court may, if it thinks fit, forthwith amend the plaint by striking out such claim or may deal with the debt or liquidated demand proper to such plaint as if no other claim had been included in the plaint and allow the suit to proceed as respects the residue of the claim.

Improper joinder of claims.

**476.** After decree the Court may, under special circumstances, set aside the decree and, if necessary, stay or set aside execution and may give leave to appear and defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to set aside decree.

**477.** In any proceeding under this Chapter the Court may order

(a) that any bill, note or other document on which the suit is founded be forthwith deposited with an officer of the Court;

Power to order bill, etc., to be deposited with officer of Court.

(b) that all proceedings be stayed until the plaintiff gives security for the costs thereof.

**478.** The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Chapter for the recovery of the amount of such bill or note.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

**479.** Except as provided by sections 471 to 478 (both inclusive), the procedure in suits under this Chapter shall be the same as the procedure in suits instituted under Chapter VI.

Procedure in suits under Chapter.

**480.** The Resident of a State may from time to time with the approval of the Chief Secretary, by notification in the *Gazette*, apply the provisions of this Chapter to any Court of a Magistrate of the First Class in such State, and may, with such approval as aforesaid, cancel any such notification.

Application of Chapter to Courts of Magistrates.



## CHAPTER XL.

## SUITS RELATING TO PUBLIC CHARITIES.

Where suits  
relating to  
public charities  
may be brought.

**481.** (i) Where in any State breach is alleged of any express or constructive trust created for public purposes of a charitable or religious nature, or where in any State the direction of the Court is deemed necessary for the administration of any such trust, any public officer nominated in that behalf in writing by the Resident of such State or any two or more persons having an interest in the trust and having obtained the consent in writing of the said Resident may institute a suit in the Supreme Court to obtain a decree

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (e) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (f) settling a scheme for the management of the trust; or
- (g) granting such further or other relief as the nature of the case may require.

(ii) Neither the Resident of the State nor any public officer nominated as aforesaid shall be personally liable for costs in any such suit.

(iii) No Court fees shall be charged in any suit instituted by a public officer under this Chapter.

## PART V.

## PROVISIONAL REMEDIES.

## CHAPTER XLI.

## ARREST AND ATTACHMENT BEFORE JUDGMENT.

## ARREST BEFORE JUDGMENT.

Where  
defendant may  
be required to  
furnish security  
for appearance.

**482.** Where at any stage of a suit, other than a suit for the possession of immovable property, the Court is satisfied by affidavit or other evidence on oath

- (a) that the defendant, with intent to delay the plaintiff or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,
  - (1) has absconded or left the jurisdiction of the Court, or
  - (2) is about to abscond or to leave the jurisdiction of the Court, or
  - (3) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or
- (b) that the defendant is about to leave the Federated Malay States under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance.



Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

**483.** (i) Where the defendant fails to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or shall make such order as it thinks fit with regard to the sum which may have been paid by the defendant under the proviso to the last preceding section.

Order for deposit or security.

(ii) Every surety for the appearance of a defendant shall bind himself to pay, in default of such appearance, any sum of money which the defendant may be ordered to pay in the suit.

**484.** (i) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

Procedure on application by surety to be discharged.

(ii) On such application being made the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(iii) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct that the surety be discharged from his obligation and shall call upon the defendant to find fresh security.

**485.** Where the defendant fails to comply with any order under section 483 or section 484, the Court may order that he be detained in the civil prison until the decision of the suit.

Procedure where defendant fails to furnish security or find fresh security.

Provided that no person shall be detained in prison under this section in any case for a longer period than three months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed five hundred dollars.

Provided further that no person shall be detained in prison under this section after he has complied with such order.

**486.** The provisions of section 332 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this Chapter.

Subsistence of defendants arrested.

#### ATTACHMENT BEFORE JUDGMENT.

**487.** (i) Where at any stage of a suit the Court is satisfied by affidavit or other evidence on oath that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

Where defendant may be required to furnish security for production of property.

(a) is about to dispose of the whole or any part of his property or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted, or is about to quit, the jurisdiction of the Court, leaving therein property belonging to him,

the Court may direct the defendant, within a time to be fixed by the Court, either to furnish security, in such sum as may be specified in



the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(ii) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(iii) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

Attachment where cause not shown or security not furnished.

**488.** (i) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(ii) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

Mode of making attachment.

**489.** The attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Investigation of claims to property attached before judgment.

**490.** Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Withdrawal of attachment when security furnished or suit dismissed.

**491.** Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment not to affect rights of strangers, nor bar decree-holder from applying for sale.

**492.** Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Property attached under Chapter need not be re-attached in execution of decree.

**493.** Where property is under attachment by virtue of the provisions of this Chapter and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

#### COMPENSATION FOR IMPROPER ARRESTS OR ATTACHMENTS.

Compensation for obtaining arrest or attachment on insufficient grounds.

**494.** (i) Where, in any suit in which an arrest or attachment before judgment has been effected.

(a) it appears to the Court that such arrest or attachment was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails, and it appears to the Court that there was no reasonable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff by its order such amount, not exceeding one thousand dollars, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment.

Provided that a Court shall not award under this section a larger amount than it might decree in a suit for compensation.

(ii) An award under this section shall bar any suit for compensation in respect of such arrest or attachment.



## CHAPTER XLII.

## TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

## TEMPORARY INJUNCTIONS.

**495.** Where in any suit it is proved by affidavit or other evidence on oath

Cases in which temporary injunction may be granted.

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit until the suit is disposed of or until further orders.

**496.** (i) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

Injunction to restrain breach of contract or other injury,

(ii) The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(iii) In case of disobedience to an injunction granted under this section or section 495 or of breach of any of the terms imposed, the Court which granted the injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months unless in the meantime the Court directs his release.

(iv) No attachment under this section shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit and shall pay the balance, if any, to the party entitled thereto.

**497.** The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction Court to direct notice to opposite party.

**498.** Any order for an injunction may be discharged or varied or set aside by the Court on application made thereto by any party dissatisfied with such order.

Order for injunction may be discharged, varied, or set aside.

**499.** An injunction directed to a corporation is binding not only on the corporation itself but also on all members and officers of the corporation whose personal action it seeks to restrain.

Injunction to corporation binding on its members and officers.



Compensation  
for issue of  
injunction on  
insufficient  
grounds.

**500.** (i) Where

- (a) it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or
- (b) after the issue of the injunction the suit of the plaintiff fails by default or otherwise, and it appears to the Court that there was no reasonable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff by its order such sum, not exceeding one thousand dollars, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction.

Provided that a Court shall not award under this section a larger amount than it might decree in a suit for compensation.

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

INTERLOCUTORY ORDERS.

Order for  
interim sale.

**501.** The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject of such suit which is subject to speedy and natural decay or which for any other just and sufficient cause it may be desirable to have sold at once.

Order for  
detention,  
preservation,  
inspection, etc.,  
of subject-  
matter of suit.

**502.** (i) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or as to which any question may arise therein;
- (b) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and
- (c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(ii) The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

Application for  
such orders to  
be after notice.

**503.** (i) An application by the plaintiff for an order under section 501 or section 502 may be made after notice in writing to the defendant at any time after institution of the suit.

(ii) An application by the defendant for a like order may be made after notice in writing to the plaintiff at any time after service of the summons.

Deposit of  
money, etc., in  
Court.

**504.** Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.



## CHAPTER XLIII.

## APPOINTMENT OF RECEIVERS.

**505.** (i) Where it appears to the Court to be just and convenient, the Court may by order Power of Court to appoint receivers.

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver; and
- (d) grant to the receiver, not being a salaried officer of the Government other than an official receiver, such fee or commission on the rents and profits of the property by way of remuneration as the Court thinks fit, and confer upon him all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents, as the owner himself has or such of those powers as the Court thinks fit.

(ii) Nothing in this section authorizes the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

**506.** Every receiver so appointed shall

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property; Duties of receiver.
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

**507.** Where a receiver

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him and shall pay the balance, if any, to the receiver.



Power of  
Resident to  
appoint official  
receivers.

**502.** (i) The Resident of a State may, with the approval of the Chief Secretary, from time to time by notification in the *Gazette* appoint for such State an official receiver, or official receivers, for the purposes of this Code.

(ii) Such official receiver or receivers may be appointed either by name or by office, and one official receiver may be appointed for a whole State or different official receivers for the different districts of a State.

(iii) From and after the appointment of any such official receiver for any State or district, no Court acting under this Code shall appoint any person, other than the official receiver for such State or district, to be a receiver within such State or district, as the case may be, for any of the purposes of this Code.

(iv) All remuneration allowed by the Court to any official receiver shall be paid into the Treasury and shall form part of the public revenue.

(v) The Resident of a State may, with the approval of the Chief Secretary, from time to time by notification in the *Gazette* fix scales of remuneration to be allowed within such State to official receivers, and thereupon such remuneration, and no other, shall be allowed within such State by the Courts.

(vi) No official receiver shall be required by any Court to give security; but the Resident of a State may require any official receiver within such State to give such security as he may think fit.

(vii) In each State there shall be paid to official receivers such salaries as may be fixed by the Resident of the State, with the approval of the Chief Secretary.

(viii) Every official receiver shall, in any matter in which he is appointed a receiver, conform to the directions of the Court which appointed him.

## PART VI.

### REMEDIES OF LANDLORDS.

#### CHAPTER XLIV.

##### TERMINATION OF TENANCIES AND DISTRESS FOR RENT.

###### NOTICE TO QUIT.

Expiration of  
notice.

**509.** Where rent due by the tenant, otherwise than for a term certain, of any house or premises to the landlord thereof has remained unpaid for not less than fifteen days after payment thereof became due and still remains unpaid, then, in the absence of an express stipulation between the parties to the contrary, any notice to quit given by the landlord to the tenant shall, if the length thereof be otherwise sufficient, expire on such day as may by the terms of the notice be appointed for the expiration thereof, whether such day coincide with the termination of some period of the tenancy or not.

###### DISTRESS.

Interpretation.

**510.** In this Chapter, unless inconsistent with the context, "Bailiff" includes any person authorized by a Court to execute a warrant of distress under this Chapter, and "officer in possession" means the person lawfully in possession of property under a warrant of attachment in execution of a decree.



**511.** No distress shall be levied for arrears of rent except under the provisions of this Chapter. But nothing in this Chapter applies to

No levy of distress except under this Chapter.

(a) rent due to any of the Rulers of the Federated Malay States or to the Government of the Federated Malay States or of any of them;

(b) rent due for a period anterior to the twelve completed months of the tenancy immediately preceding the date of the application under this Chapter.

**512.** Any person claiming to be entitled to arrears of rent of any house or premises may apply for a warrant of distress as hereinafter mentioned.

Who may apply.

**513.** The application shall be by affidavit and may be made to any Court which would have jurisdiction to hear and determine a suit for the arrears claimed. It shall be entitled as a suit, adding the word "Distress," and the landlord shall be plaintiff and the tenant defendant, and it shall be in the form in the third schedule, with such variations as circumstances may require.

Form of application.

**514.** The application may be presented by any attorney or agent authorized in writing to levy distress. The document appointing such attorney or agent may be either general or for the particular case. Such power may be in the form in the third schedule, with such variations as circumstances may require, and shall be produced at the time of application.

Attorney may apply.

**515.** The Court may order a warrant of distress to be issued or may refuse the application. If a warrant is issued, it shall be returnable within six days and shall be in the form in the third schedule, with such variations as circumstances may require.

Issue of warrant.

**516.** (i) In pursuance of such warrant the Bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant and in the apparent possession of the defendant or such part thereof as may in the Bailiff's judgment be sufficient to cover the amount of the said rent together with the costs of the said distress.

What may be seized.

(ii) The Bailiff shall not seize

(a) things in actual use in the hands of a person at the time of the seizure;

(b) tools and implements not in use, where there is other movable property in or upon the house or premises sufficient to cover such amount and costs;

(c) goods of temporary guests at an inn;

(d) goods of lodgers in a furnished lodging-house;

(e) the debtor's necessary wearing-apparel;

(f) goods in the custody of the law;

(g) goods delivered to a person exercising a public trade to be carried, wrought, worked up or managed in the way of his trade.

**517.** The Bailiff may impound or otherwise secure the property seized in or upon the premises chargeable with the rent or, if necessary, remove the same.

Power to impound or remove.



- Inventory and estimate of value.** **518.** On seizing any property under section 516, the Bailiff shall make an inventory of such property and an approximate valuation thereof and shall give a notice in writing in the form in the third schedule, with such variations as circumstances may require, to the defendant, if he be upon the premises, or to any person who may be there on the defendant's behalf; and, if there shall be no such person on the premises, the Bailiff shall post the notice in some conspicuous place on the premises and shall, as soon as may be, file in Court copies of the said inventory, valuation and notice. Such notice shall state the date of the intended sale.
- Application to discharge.** **519.** (i) The defendant, or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such defendant or other person, may at any time within five days from such seizure, on twenty-four hours' notice to the plaintiff setting out the ground on which the claim is founded, apply to the Court from which the warrant of distress issued to discharge or suspend the warrant or to release a distrained article, and the Court may discharge or suspend the warrant or release such article accordingly upon such terms as it may think fit.
- (ii) The person against whom an order under this section is made in respect of property seized may institute a suit to establish the right which he claims in respect of such property, but, subject to the result of such suit, if any, the order shall be conclusive.
- When property shall be sold.** **520.** (i) In default of any order to the contrary, the distrained property shall be sold on the day and at the place mentioned in the notice. All sales under this Chapter shall be made by public auction between the hours of 8 a.m. and 6 p.m., and notice of every such sale shall be posted at the door of the Court.
- Penalty.** (ii) Any person making or abetting a sale in contravention of the provisions of this section shall be liable, on conviction before the Court of a Magistrate, to a fine not exceeding one hundred dollars.
- Property exceeding one hundred dollars to be sold by licensed auctioneer.** **521.** Where the approximate valuation of the property seized exceeds one hundred dollars, the sale shall be conducted by an auctioneer licensed to conduct sales under the Auction Sales Enactments, 1905, or other statutory provision for the licensing of auctioneers, and in other cases by the Bailiff. For the purposes of sale the distrained property may be removed to the auctioneer's sale room or other suitable place, and any property remaining unsold after satisfaction of the distress and the expenses thereof shall be returned without delay to the place from which it was removed.
- Application of proceeds of sale.** **522.** The Bailiff shall apply the proceeds of sale, first in payment of the costs of the distress, then in satisfaction of the debt, and the surplus (if any) shall be returned to the defendant. The Bailiff shall keep a record of all sums so received and of the application thereof.
- Provision for distress by one of joint owners.** **523.** Where a right to distrain accrues to persons jointly or together interested in any premises, such right may be exercised by any one of such persons in his own name and the names of those jointly or together interested with him, and the levy shall be a complete discharge to the defendant for the amount recovered; but the Judge may in any case require the party so applying to produce a written authority to distrain, signed by the other persons jointly or together interested with him.



**524.** Where a right to recover arrears of rent accrues to persons in a representative or fiduciary capacity, as in the case of executors, administrators, guardians of minors, committees of lunatics, receivers, the official assignee, chargees in possession, or trustees, such persons may distrain under the provisions of this Chapter for the rent due, whether the same accrued due before or after the date on which they acquired such representative or fiduciary capacity.

Representative  
or fiduciary  
capacity of  
person issuing  
distress.

**525.** Lessees may distrain against under-lessees.

Lessee against  
under-lessee.

**526.** Arrears of rent may be distrained for after the end or determination of any term or tenancy at will in the same manner as if such term or tenancy had not been ended or determined; provided that such distress be made during the continuance of the possession of the tenant from whom the arrears are due.

Distress after  
term.

**527.** No movable property shall be removed from any premises under any warrant of execution from any Court, other than warrants for the execution of decrees in favour of the Chief Secretary or of any of the Federated Malay States or the Ruler thereof or the Government of the said States or of any of them, till the claim for the rent due to the landlord, or lessor, or person entitled to receive the rent, is satisfied; provided that such claim shall not in any case exceed the amount due for the last six months' rent.

Landlord's  
claim to be  
satisfied.

**528.** Where movable property otherwise liable to distress for rent is at the time of the issue of any warrant of distress, or thereafter before seizure under such warrant, seized under any warrant of execution from any Court, the Bailiff shall not seize such movable property but shall, unless both warrants are in the hands of the same officer, deliver a copy of the warrant of distress to the officer in possession, who shall (except where the warrant of execution is for the execution of a decree in favour of the Chief Secretary or of any of the Federated Malay States or the Ruler thereof or the Government of the said States or of any of them) out of the first moneys to arise by any sale of such movable property, after payment of the expenses of such sale, pay to the Bailiff the amount mentioned in such warrant of distress with the costs of the same; provided that if the amount mentioned in such warrant of distress shall exceed the amount due for six months' rent last past, the amount of six months' rent and costs, and no more, shall be paid on the distress.

Procedure  
where property  
is already under  
seizure.

**529.** The officer in possession, upon receiving such copy of the warrant of distress, or upon any warrant of distress being delivered to him for levy, shall notify the decree-holder or his solicitor and shall also (by delivering a notice in writing upon the premises in which the property was seized) notify the judgment-debtor of the receipt of such warrant of distress and the amount claimed thereunder; and such decree-holder or judgment-debtor, or either of them, may apply to the Court to discharge or suspend the warrant of distress within the time and in the manner provided by this Chapter for applications to discharge or suspend warrants of distress.

Notice by officer  
in possession.

**530.** Where any execution is paid off after service of a copy of a warrant of distress upon the officer in possession, such officer shall forthwith, before giving up possession or leaving the premises, give notice thereof to the Bailiff.

Officer in  
possession to  
give notice of  
payment off of  
execution.



Tenant evading  
distress by  
removal of  
goods.

**531.** (i) If any tenant or lessee, or person in possession or occupation, of any premises on which an arrear of rent is due, recoverable by distress, shall carry away, or cause or permit to be carried away, from the premises any property liable to be seized for such rent, so as to prevent or hinder the distraint of the same, a Judge may, on a summary application supported by affidavit, authorize the officer executing a warrant of distress and the persons acting under him to follow, take and seize such property under the warrant of distress wherever it may be found within thirty days from the day of removal, exclusive of the day of removal, and to deal with such property as if it had been found on the premises distrained and, if advisable, to replace the same on the premises from which it may have been removed. Provided that an officer executing a warrant of distress may, without such authority, follow and seize any such property found by him in the act of being removed from any such premises and before the same is placed in any other house or building.

(ii) An application and an authority under this section may be in the forms in the third schedule, with such variations as circumstances may require.

Goods removed  
sold *bona fide*.

**532.** Where such property, or any part thereof, so carried away has been sold *bona fide* and for a sufficient consideration, before or after removal from the premises distrained, to any person not knowing nor having the means of knowing that the same was liable to be distrained for rent or was carried away so as to prevent or hinder the landlord or lessor from distraining, the same, or so much thereof as shall have been so sold, shall not be seized or, if seized, shall be restored by the officer or Bailiff distraining.

Deserted  
premises.

**533.** (i) Where the rent reserved in respect of demised premises is a full three-fourths of the yearly value of the demised premises, and where neither the value of the premises by the year nor the rent payable in respect of the tenancy by the year exceeds three hundred dollars, if the tenant shall be in arrear for two months and shall desert the demised premises and leave the same uncultivated or unoccupied so that no sufficient distress can be had to satisfy the arrears of rent, the Court of a Magistrate of the First Class may, on the application of the landlord or lessor or his agent, supported by affidavit, make an order authorizing the Bailiff to enter on the premises, breaking any doors, windows or gates (if necessary) and, if the premises are found to be deserted with no sufficient distress therein, to take charge thereof and to affix a notice thereon in a conspicuous place that, unless cause to the contrary is shown before the Court within ten days, the premises will be given over to the applicant; and, if no such cause is shown, the Court may, on proof of the fact of desertion, of non-payment of at least two months' rent last due, of want of sufficient distress and that the applicant is the landlord or lessor of the premises, make an order directing the Bailiff to put the applicant in possession of the premises, and the demise shall become void.

(ii) An application and an order under this section may be in the forms in the third schedule, with such variations as circumstances may require.



## PART VII.

## APPEALS.

## CHAPTER XLV.

## APPEALS IN ORDINARY FORM.

**534.** (i) Nothing in this Chapter shall affect the procedure on appeals from the Court of a Judicial Commissioner to the Court of Appeal. Scope of Chapter.

(ii) Appeals from the Court of a Penghulu to the Court of a Magistrate of the First Class shall be heard in a summary manner and with as little formality as possible. The procedure at present in force in such appeals shall continue in force, subject to any amendments which may from time to time be directed by the Judicial Commissioners.

(iii) The succeeding provisions of this Chapter relate to appeals from the decisions of the Lower Civil Courts to the Court of a Judicial Commissioner.

**535.** In this Chapter the term "decree" includes "order," and the procedure prescribed shall, so far as may be, apply to orders made under this Code. Interpretation.

**536.** No appeal shall be brought after the expiration of one month from the time when the decision appealed against was pronounced. Provided that a Judicial Commissioner may, if he considers that special circumstances render an extension just, give leave to appeal within such extended time after the expiration of such one month as he may think fit. Limit of time for appealing.

**537.** (i) Every appeal shall be preferred in the form of a memorandum in writing signed by the appellant or his solicitor and presented to the appellate Court. The memorandum shall be accompanied by a copy of the decree appealed against and (unless the appellate Court dispenses therewith) of the judgment on which it is founded and of the certificate of the grounds of such judgment furnished under section 201. Form of appeal. What to accompany memorandum.

(ii) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

**538.** The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this section. Appellant confined to grounds set out.

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had sufficient opportunity of contesting the case on that ground.

**539.** (i) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there. Rejection or amendment of memorandum.



(ii) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(iii) Where a memorandum of appeal is amended, the Judge shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all.

**540.** Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

#### STAY OF PROCEEDINGS AND OF EXECUTION.

Order for stay of execution.

**541.** (i) An appeal shall not operate as a stay of proceedings under the decree appealed against except in so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred against the decree; but the appellate Court may for sufficient cause order stay of execution of such decree.

(ii) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(iii) No order for stay of execution shall be made under this section unless the Court making it is satisfied

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree as may ultimately be binding upon him.

(iv) Notwithstanding anything contained in sub-section (iii) the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

Security in case of order for execution of decree appealed against.

**542.** (i) Where an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant; require security to be furnished for the restitution of any property which may be or has been taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree of the appellate Court; or the appellate Court may for like cause direct the Court which passed the decree to take such security.

(ii) Where an order has been made for the sale of immovable property in execution of a decree and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor to the Court which made the order be stayed, on such terms as to giving security or otherwise as the Court thinks fit, until the appeal is disposed of.

No security to be required from the Government or from public officers.

**543.** No such security as is mentioned in sections 541 and 542 shall be required from the Chief Secretary or from a State or from any public officer sued in respect of an act alleged to be done by him in his official capacity.



## PROCEDURE ON ADMISSION OF MEMORANDUM OF APPEAL.

**544.** (i) Where a memorandum of appeal is admitted, the appellate Court or the proper officer of that Court shall endorse thereon the date of presentation and shall register the appeal in a book to be kept for the purpose.

Registration of memorandum of appeal.

(ii) Such book shall be called the Register of Civil Appeals.

**545.** (i) The appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, require from the appellant security for the costs of the appeal, or of the original suit, or of both :

Appellate Court may require appellant to furnish security for costs.

Provided that the Court shall require such security in all cases in which the appellant is residing out of the Federated Malay States and is not possessed of any sufficient immovable property within the Federated Malay States or within the Colony other than the property (if any) to which the appeal relates.

(ii) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

(iii) Where such security is furnished, any costs for which a surety may have rendered himself liable may be recovered from him in execution of the decree of the appellate Court in the same manner as if he were the appellant.

**546.** (i) The appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his solicitor and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice of the appeal to the Court against whose decree the appeal is preferred and without serving notice on the respondent or his solicitor.

Power to dismiss appeal without sending notice to Lower Court.

(ii) If on the day fixed under sub-section (i), or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by his solicitor when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(iii) The dismissal of an appeal under this section shall be notified to the Court against whose decree the appeal is preferred.

**547.** (i) Unless the appellate Court dismisses the appeal under the last preceding section, it shall fix a day for hearing the appeal.

Day for hearing appeal.

(ii) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

**548.** (i) Where the appeal is not dismissed under section 546, the appellate Court shall send notice of the appeal to the Court against whose decree the appeal is preferred.

Appellate Court to give notice to Court whose decree appealed against.

(ii) Where the appeal is from a Court the records of which are not deposited in the appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the appellate Court.

(iii) Either party may apply in writing to the Court against whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.



Publication and  
service of notice  
of day for  
hearing appeal.

**549.** (i) Notice of the day fixed under section 547 shall be posted up in the appellate Court-house, and a like notice shall be sent by the appellate Court to the Court against whose decree the appeal is preferred and shall be served on the respondent or on his solicitor in the appellate Court in the manner provided in Chapter VII for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(ii) Instead of sending the notice to the Court against whose decree the appeal is preferred, the appellate Court may itself cause the notice to be served on the respondent or his solicitor under the provisions above referred to.

Contents of  
notice.

**550.** The notice to the respondent shall declare that, if he does not appear in the appellate Court on the day so fixed, the appeal will be heard *ex parte*.

#### PROCEDURE ON HEARING.

Order of  
hearing.

**551.** (i) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(ii) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Where  
appellant, or  
respondent,  
does not appear.

**552.** (i) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by his solicitor when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(ii) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Where  
notice not  
served in conse-  
quence of  
appellant's  
failure to  
deposit cost.

**553.** Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed.

Provided that no such order shall be made, although the notice has not been served upon the respondent, if on any such day the respondent appears in person or by a solicitor when the appeal is called on for hearing.

Re-admission of  
appeal dis-  
missed for  
default.

**554.** Where an appeal is dismissed under section 546, sub-section (ii), section 552 or section 553, the appellant may apply to the appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Power to  
adjourn hearing  
and direct  
persons  
appearing  
interested  
to be made  
respondents.

**555.** Where it appears to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.



**556.** Where an appeal is heard *ex parte* and judgment is given against the respondent, he may apply to the appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Re-hearing on application of respondent against whom *ex parte* decree made.

**557.** (i) Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below but take any objection to the decree which he could have taken by way of appeal, provided that he has filed such objection in the appellate Court within one month from the date of the service on him or his solicitor under section 549 of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow.

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

(ii) Such objection shall be in the form of a memorandum, and the provisions of section 537, in so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(iii) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his solicitor of having received a copy thereof, the appellate Court shall cause such a copy to be served, as soon as may be after the filing of the objection, on such party or his solicitor at the expense of the respondent.

(iv) The provisions of Chapter XLVI shall, so far as they can be made applicable, apply to an objection under this section.

**558.** Where the Court against whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court against whose decree the appeal is preferred with directions to re-admit the suit under its original number in the register of civil suits and proceed to determine the suit; and the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Remand of case by appellate Court.

**559.** If upon the hearing of any appeal it shall appear to the appellate Court that a new trial ought to be had, the appellate Court may, if it thinks fit, order that the decree shall be set aside and that a new trial be had.

Order for new trial.

**560.** Where the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court against whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the judgment of the appellate Court proceeds.

Where evidence on record sufficient, appellate Court may determine suit.

**561.** Where the Court against whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate Court essential to the right decision of the suit upon the merits, the appellate Court may, if necessary, frame issues and refer the same for trial to the Court

Where appellate Court may frame issues and refer them for trial to Court whose decree appealed against.



against whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues and shall return the evidence to the appellate Court together with its findings thereon and the reasons therefor.

Findings and evidence to be put on record.

**562.** (i) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the appellate Court, present a memorandum of objections to any finding.

(ii) After the expiration of the period so fixed for presenting such memorandum the appellate Court shall proceed to determine the appeal.

Production of additional evidence in appellate Court.

**563.** (i) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. But if

(a) the Court against whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate Court may allow such evidence or document to be produced or witness to be examined.

(ii) Wherever additional evidence is allowed by the appellate Court to be produced, the Court shall record the reason for its admission.

Mode of taking additional evidence.

**564.** Wherever additional evidence is allowed to be produced, the appellate Court may either take such evidence or direct the Court against whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the appellate Court.

Points to be defined and recorded.

**565.** Where additional evidence is directed or allowed to be taken, the appellate Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

#### JUDGMENT IN APPEAL.

Judgment where and when pronounced.

**566.** The appellate Court, after hearing the parties or their solicitors and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court either at once or on some future day, of which notice shall be given to the parties or their solicitors.

What judgment may direct.

**567.** The judgment may be for confirming, varying or reversing the decree against which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, the appellate Court may pass a decree accordingly.

No reversal, variation or remand for error or irregularity not affecting merits or jurisdiction.

**568.** No decree shall be reversed or substantially varied, nor shall any case be remanded in appeal, on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court.



## DECREE IN APPEAL.

**569.** (i) The decree of the appellate Court shall bear date the day on which the judgment was pronounced.

Date and contents of decree.

(ii) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(iii) The decree shall also state the amount of costs incurred in the appeal and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(iv) The decree shall be signed and dated by the Registrar.

**570.** Certified copies of the decree in appeal shall be furnished to the parties on application to the appellate Court and at their expense.

Copies of decree to be furnished to parties.

**571.** A copy of the decree, certified by the Judge of the appellate Court, shall be sent to the Court which passed the decree appealed against and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed against.

**572.** (i) The appellate Court shall have, in appeals under this Chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter VI; and, in Chapter XXIV, so far as may be, the word "plaintiff" shall be deemed to include a plaintiff-appellant or defendant-appellant, the word "defendant" a plaintiff-respondent or defendant-respondent, and the word "suit" an appeal, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

Appellate Court to have same powers as Courts of original jurisdiction.

(ii) The provisions hereinbefore contained shall apply to appeals under this Chapter so far as such provisions are applicable.

**573.** Where a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal according to the provisions hereinbefore contained for the execution of decrees in suits.

Execution of decree of appellate Court.

## CHAPTER XLVI.

## PAUPER APPEALS.

**574.** Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal and may be allowed to appeal as a pauper, subject in all matters, including the presentation of such application, to the provisions of Chapters XXXVI and XLV, in so far as those provisions are applicable.

Who may appeal as pauper.

Provided that the Court shall reject the application, unless, upon a perusal thereof and of the judgment and decree appealed against, it sees reason to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust.



Inquiry into  
pauperism.

**575.** The inquiry into the pauperism of the applicant may be made either by the appellate Court or, under the orders of the appellate Court, by the Court against whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is preferred, no further enquiry in respect of his pauperism shall be necessary, unless the appellate Court sees cause to direct such enquiry.

## PART VIII.

### REFERENCE, REVISION AND REVIEW.

#### CHAPTER XLVII.

##### REFERENCE AND REVISION.

Reference of  
question of law  
to Court of a  
Judicial  
Commissioner.

**576.** Where before or on the hearing of a suit or in the execution of a decree any question of law, or usage having the force of law, arises on which any Lower Civil Court trying the suit or executing the decree entertains reasonable doubt, such Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement, with its own opinion on the point, for the decision of the Court of a Judicial Commissioner.

Court may pass  
decree contin-  
gent upon  
decision of  
Court of a  
Judicial  
Commissioner.

**577.** The Lower Civil Court may either stay the proceedings or proceed in the case, notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the Court of a Judicial Commissioner on the point referred ; but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the Court of a Judicial Commissioner upon the reference.

Judgment of  
Court of a  
Judicial  
Commissioner to  
be transmitted  
and case  
disposed of  
accordingly.

**578.** The Court of a Judicial Commissioner, after hearing the parties if they appear and desire to be heard, shall decide the point so referred and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the Court of a Judicial Commissioner.

Costs of  
reference.

**579.** The costs, if any, consequent on a reference for the decision of the Court of a Judicial Commissioner shall be costs in the case.

Power to alter,  
etc., decree of  
Court making  
reference.

**580.** Where a case is referred to the Court of a Judicial Commissioner under this Chapter, the said Court may return the case for amendment and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose and make such order as it thinks fit.

Reference of  
question of  
jurisdiction.

**581.** (i) Where at any time before judgment a Lower Civil Court in which a suit has been instituted doubts whether the suit is cognizable by itself or is not so cognizable, it may submit the record to the Court of a Judicial Commissioner with a statement of its reasons for the doubt as to the nature of the suit.

(ii) On receiving the record and statement the Court of a Judicial Commissioner may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.



**582.** The Court of a Judicial Commissioner may call for the record of any case which has been decided by a Lower Civil Court and in which no appeal lies to the Court of a Judicial Commissioner, and, if the Court by which the case was decided appears

Revision of cases in which no appeal lies.

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the Court of a Judicial Commissioner may make such order in the case as it thinks fit.

**583.** Nothing in this Chapter shall be deemed to derogate from, or in any way interfere with, the powers of supervision and revision given to the Court of a Judicial Commissioner by "The Courts Enactment, 19 ."

Other powers not affected.

#### CHAPTER XLVIII.

##### REVIEW.

**584.** (i) Any person considering himself aggrieved

- (a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred, or

Application for review of judgment.

- (b) by a decree or order from which no appeal is allowed,

who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him may apply for a review of judgment to the Court which passed the decree or made the order.

(ii) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of such appeal is common to the applicant and the appellant or where, being a respondent, he can present to the appellate Court the case on which he applies for the review.

**585.** Except on the ground of the discovery of such new and important matter or evidence as aforesaid or of some clerical or arithmetical error apparent on the face of the decree, no application for review of a decree or order shall be made to any Judge other than the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under section 587 (ii), be disposed of by his successor.

To whom applications for review may be made.

**586.** The provisions hereinbefore contained as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Form of application for review.

**587.** (i) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where rejected; where granted.

(ii) Where the Court is of opinion that the application for review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion.



Provided that

- (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, without strict proof of such allegation.

Order of rejection not appealable. Objections to order granting application.

**588.** (i) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was

- (a) in contravention of the provisions of section 585;
- (b) in contravention of the provisions of section 587; or
- (c) after the expiration of thirty days from the date of the decree or order and without sufficient cause.

(ii) Such objection may be taken at once by an appeal against the order granting the application or may be taken in any appeal against the final decree or order passed or made in the suit.

(iii) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for hearing the same.

(iv) No order shall be made under sub-section (iii) unless notice in writing of the application has been served on the opposite party.

Procedure on grant of application for review.

**589.** When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Bar of certain applications.

**590.** No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

## PART IX.

### CHAPTER XLIX.

#### MISCELLANEOUS.

Resident may exempt certain persons from personal appearance in Court.

**591.** (i) The Resident of a State may, by notification in the *Gazette*, exempt from personal appearance in Court in such State any person whose rank, in the opinion of such Resident, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

(ii) The names and residences of the persons so exempted by the Resident of a State shall, from time to time, be forwarded by such Resident to the Supreme Court and a list of such persons shall be kept in such Court within the said State, and a list of such of the said persons as reside within the local limits of the jurisdiction of each Court in the said State which is subordinate to the Supreme Court shall be kept in such subordinate Court.



(iii) Where any person so exempted claims the privilege of such exemption and it is consequently necessary to examine him by commission, he shall pay the costs of the commission, unless the party requiring his evidence pays such costs.

**592.** (i) Where in a case pending before any Court there appears to such Court sufficient ground for sending for investigation to the Court of a Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476, or section 477 of the Penal Code which may be made in the course of the case or in respect of any document offered in evidence in the case, the Court may cause the person charged to be detained till the rising of the Court and may then send him in custody to the Court of a Magistrate or take sufficient bail for his appearance before the Court of a Magistrate.

Procedure where charge of certain offences requires investigation.

(ii) The Court shall send to the Public Prosecutor or a Deputy Public Prosecutor the evidence and documents relevant to the charge and may bind over any person to appear and give evidence before the Court of a Magistrate.

(iii) The Court of a Magistrate shall receive such charge and proceed with it according to law, and it shall be the duty of the Public Prosecutor or a Deputy Public Prosecutor to prosecute.

**593.** The forms contained in the third schedule, with such variations as circumstances require, may be used for the purpose of carrying out the provisions of this Code, and, if no such forms shall be found applicable, then such other similarly concise forms may be used as the Judicial Commissioners may from time to time prescribe.

Forms.

**594.** (i) In any suit relating to salvage, towage or collision the Court may, if it thinks fit, and upon request of either party to such suit shall, if possible, summon to its assistance, in such manner as the Judicial Commissioners, with the approval of the Chief Secretary, by rule prescribe, two competent assessors; and such assessors shall attend and assist accordingly.

Assessors in suits relating to salvage, etc.

(ii) Every such assessor shall receive such fees for his attendance as the Judicial Commissioners, with the approval of the Chief Secretary, by rule prescribe. Such fees shall be paid by such of the parties as the Court in each case directs.

**595.** (i) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate within the Federated Malay States but outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment and send to the Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedure where person to be arrested or property to be attached is within the Federated Malay States but outside jurisdiction of the Court applied to.

(ii) Such Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers and shall inform the Court which issued or made such warrant or order of the arrest or attachment.



(iii) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XLI) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

Application of  
Chapter XXII.

**596.** (i) The provisions of Chapter XXII shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be ordered by a Civil Court in any civil proceeding.

(ii) In the same Chapter the expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees unless there is anything repugnant in the subject or context, be deemed to include,

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Application of  
provisions  
relating to  
witnesses.

**597.** The provisions of Chapters XVI and XVIII relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Service of  
summonses  
issued in the  
Colony or  
Malay States.

**598.** Summonses issued by any Civil Court

(a) in the Colony, or

(b) in any State in the Malay Peninsula under the Protection of His Britannic Majesty to which the Chief Secretary, by notification in the *Gazette*, extends the operation of this section,

if sent to the Courts in the Federated Malay States may be served as if they had been issued by such Courts.

Release on  
ground of  
illness.

**599.** (i) At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person for whose arrest the warrant was issued.

(ii) Where a judgment-debtor has been arrested under this Code, the Court may release him if in its opinion he is not in a fit state of health to be detained in the civil prison.

(iii) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom

(a) by the Resident of the State in which such prison is situate, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(iv) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 328.



**600.** (i) Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed under section 383, may be done by the Registrar of the Court. Powers of Registrar.

(ii) The Judicial Commissioners may from time to time, by rule published in the *Gazette*, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

(iii) A Judicial Commissioner may, in any suit in which it shall appear necessary for the purposes of justice, make an order for the examination on affirmation before the Registrar of any witness, and may empower any party to such suit to give such deposition in evidence; provided that no such deposition shall be used against any party unless reasonable facilities were afforded to such party to attend at the examination and to cross-examine the witness.

**601.** Any power vested by this Code in the Judicial Commissioners to prescribe fees or allowances or forms or to direct procedure or to make rules may be exercised by any two Judicial Commissioners, of whom the Chief Judicial Commissioner shall be one. Exercise of certain powers of Judicial Commissioners.

FIRST SCHEDULE.  
ENACTMENTS REPEALED.  
I.—STATE ENACTMENTS.

State.	No. and year.	Short title.	Extent of repeal.
Perak ...	11 of 1902	The Civil Procedure Code, 1902	The whole, in so far as not already repealed
Selangor ...	13 "	" " "	"
N. Sembilan	7 "	" " "	"
Pahang ...	11 "	" " "	"
Perak ...	15 of 1905	The Civil Procedure Code Amendment Enactment, 1905	The whole
Selangor ...	17 "	" " "	"
N. Sembilan	16 "	" " "	"
Pahang ...	16 "	" " "	"
Perak ...	8 of 1906	The Civil Procedure Code Amendment Enactment, 1906	"

II.—FEDERAL ENACTMENT.

No. and year.	Short title.	Extent of repeal.
17 of 1913	The Civil Procedure Codes, 1902, Amendment Enactment, 1913	The whole



## SECOND SCHEDULE.

CHAPTERS AND SECTIONS OF THIS CODE WHICH APPLY (SO FAR AS THEY ARE APPLICABLE) TO THE CIVIL COURTS BELOW THE COURT OF A JUDICIAL COMMISSIONER.

PRELIMINARY : Sections 1, 2, 3 and 4.

Chapter.

- I.—Res judicata.
- II.—The Place of Suing.
- III.—Parties to Suits.
- IV.—Frame of Suit, except section 28 and section 30.
- V.—Recognized Agents and Solicitors.
- VI.—Institution of Suits.
- VII.—Issue and Service of Summons, except section 72.
- VIII.—Written Statement and Set-off.
- IX.—Appearance of Parties and Consequence of Non-appearance.
- X.—Examination of Parties by the Court.
- XI.—Discovery and Inspection.
- XII.—Admissions.
- XIII.—Production, Impounding and Return of Documents.
- XV.—Section 154, Failure to produce evidence.
- XVI.—Summoning and Attendance of Witnesses.
- XVII.—Adjournments.
- XVIII.—Hearing of the Suit and Examination of Witnesses.
- XIX.—Affidavits.
- XX.—Judgment and Decree, except so far as relates to Immovable Property.
- XXI.—Sections 218, 219 and 220, Costs.
- XXII.—Execution of Decrees, except so far as relates to Execution against Immovable Property otherwise than by order of the Supreme Court.
- XXIV.—Death, Marriage and Insolvency of Parties.
- XXV.—Withdrawal and Adjustment of Suits.
- XXVI.—Payment into Court.
- XXVII.—Security for Costs.
- XXVIII.—Commissions and Letters of Request, except section 380.
- XXX.—Suits by or against the Government.
- XXXI.—Suits by or against Military Men.
- XXXII.—Suits by or against Corporations.
- XXXIII.—Suits by or against Firms and Persons carrying on business in names other than their own.
- XXXIV.—Suits by or against Trustees, Executors and Administrators.
- XXXV.—Suits by or against Minors and Persons of unsound mind.



- XXXVI.—Suits by Paupers.  
 XXXVII.—Interpleader.  
 XXXVIII.—Special Case.  
 XLI.—Arrest and Attachment before Judgment, except as regards Immovable Property.  
 XLIII.—Appointment of Receivers.  
 XLIV.—Termination of Tenancies and Distress for Rent.  
 XLVII.—Reference and Revision.  
 XLVIII.—Review.  
 XLIX.—Miscellaneous.

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THIRD SCHEDULE.

FORMS OF PLEADINGS AND DECREES.

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A.—PLAINTS; GENERAL.

No. 1.

MONEY LENT.

In the Court of....., at.....

Civil Suit No.....

A.B. of.....Plaintiff,  
 against

C.D. of.....Defendant.

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., he lent the defendant.....dollars repayable on demand [or on the.....day of.....].
2. The defendant has not paid the same, except.....dollars paid on the.....day of....., 19....  
 [If the plaintiff claims exemption from any law of limitation, say:]
3. The plaintiff was a minor [or insane] from the.....day of .....till the .....day of.....
4. The plaintiff prays judgment for.....dollars, with interest at .....per cent. from the .....day....., 19....

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No. 2.

MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A.B. and G.H., the above-named plaintiffs, state as follows :

1. On the.....day of....., 19..., at....., the defendant received.....dollars [or a cheque on the.....Bank for.....dollars] from one E.F. for the use of the plaintiffs.
2. The defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for.....dollars, with interest at .....per cent. from the.....day of....., 19....



## No. 3.

## PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., he and E.F., since deceased, delivered to the defendant [one thousand barrels of flour, five hundred gantangs of rice, or as the case may be] for sale upon commission.
2. On the.....day of..... 19..., [or, on some day unknown to the plaintiff, before the.....day of....., 19...], the defendant sold the said merchandise for.....dollars.
3. The commission and expenses of the defendant thereon amount to.....dollars.
4. On the.....day of....., 19..., the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. He has not paid the same.

[Demand of judgment.]

## No. 4.

## MONEY OVERPAID.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff agreed to buy and the defendant agreed to sell.....bars of silver at.....dollars per kati of fine silver.
2. The plaintiff procured the said bars to be assayed by E.F., who was paid by the defendant for such assay, and the said E.F. declared each of the said bars to contain 1,500 katis of fine silver, and the plaintiff accordingly paid the defendant.....dollars therefor.
3. Each of the said bars contained only 1,200 katis of fine silver, of which fact the plaintiff was ignorant when he made the payment.
4. The defendant has not repaid the sum so overpaid.

[Demand of judgment.]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

## No. 5.

## MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., at the request [or by the authority] of the defendant, the plaintiff paid to E.F. ....dollars.
2. In consideration thereof, the defendant promised [or became bound] to pay the same to the plaintiff on demand [or as the case may be].



3. [On the.....day of....., 19..., the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[Demand of judgment.]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at.....E.F., of....., deceased, sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].

2. The defendant promised to pay.....dollars for the said goods on delivery [or, on the.....day of.....(some day before the plaint was filed)].

3. He has not paid the same.

4. The said E.F. in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. On the.....day of....., 19..., the said E.F. died.

6. On the.....day of....., 19..., probate of the said will was granted to the plaintiff by the Court of.....

7. The plaintiff as executor as aforesaid [demand of judgment].

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the .....day of....., 19..., at....., plaintiff sold and delivered to the defendant [sundry articles of house furniture] but no express agreement was made as to the price.

2. The same were reasonably worth.....dollars.

3. The defendant has not paid the same.

[Demand of judgment.]

No. 8.

GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST  
AT A FIXED PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the..... day of....., 19..., at....., plaintiff sold to the defendant [one hundred barrels of flour] and, at the request of the defendant, delivered the same to E.F.

2. The defendant promised to pay to the plaintiff.....dollars therefor.

3. He has not paid the same.

[Demand of judgment.]



## No. 9.

NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S  
TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., plaintiff furnished to [*Mary Jones*] the wife of [*James Jones*], deceased, at her request, sundry articles of [food and clothing], but no express agreement was made as to the price.

2. The same were necessary for her.

3. The same were reasonably worth.....dollars.

4. The said *James Jones* refused to pay the same.

5. The defendant is the executor of the last will of the said *James Jones*.

[Demand of judgment.]

## No. 10.

GOODS SOLD AT A FIXED PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff sold to E.F., of....., deceased [all the crops then growing on his farm in.....].

2. The said E.F. promised to pay the plaintiff.....dollars for the same.

3. He did not pay the same.

4. The defendant is administrator of the estate of the said E.F.

[Demand of judgment.]

## No. 11.

GOODS SOLD AT A REASONABLE PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., E.F., of....., sold to the defendant [all the fruit growing in his orchard in.....], but no express agreement was made as to the price.

2. The same was reasonably worth.....dollars.

3. The defendant has not paid the same.

4. On the.....day of.....the Court of.....duly adjudged the said E.F. to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5. The plaintiff as committee as aforesaid [demand of judgment].



## No. 12.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., E.F., of....., agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs], and that the said E.F. should pay for the same upon the delivery thereof.....dollars.
2. The plaintiff made the said goods, and on the.....day of....., 19..., offered to deliver the same to the said E.F., and has ever since been ready and willing so to do.
3. The said E.F. has not accepted the said goods or paid for the same.
4. On the.....day of....., 19..., the Court of.....duly adjudged the said E.F. to be a lunatic, and appointed the defendant committee of his estate.
5. The plaintiff prays judgment for.....dollars with interest from the.....day of....., at the rate of.....per cent. per annum to be paid out of the estate of the said E.F. in the hands of the defendant.

## No. 13.

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., plaintiff put up at auction sundry [articles of merchandise], subject to the condition that all goods not paid for and removed by the purchaser thereof within [ten days] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.
2. The defendant purchased [one crate of crockery] at the said auction at the price of.....dollars.
3. The plaintiff was ready and willing to deliver the same to the defendant on the said day and for [ten days] thereafter, of which the defendant had notice.
4. The defendant did not take away the said goods purchased by him, nor pay therefor, within [ten days] after the sale, nor afterwards.
5. On the.....day of....., 19..., at....., the plaintiff re-sold the said [crate of crockery], on account of the defendant, by public auction, for.....dollars.
6. The expenses attendant upon such re-sale amounted to.....dollars.
7. The defendant has not paid the deficiency thus arising, amounting to.....dollars.

[Demand of judgment.]



## No. 14.

## PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the plaintiff sold [and conveyed] to the defendant [the house and compound No....., in the city of.....; or, a farm known as....., in.....; or, a piece of land lying, etc.]

2. The defendant promised to pay the plaintiff.....dollars for the said [house and compound, or farm, or land].

3. He has not paid the same.

[Demand of judgment.]

[NOTE.—Where there has been no actual conveyance, say, in paragraph 1, “sold to the defendant the house, etc., and placed him in possession of the same.”]

## No. 15.

## PURCHASE-MONEY OF IMMOVABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No....., in the town of.....; or, one hundred acres of land in....., bounded by the Ampang Road, and by other lands of the plaintiff] for.....dollars.

2. On the.....day of....., 19..., at....., the plaintiff tendered [or, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. The defendant has not paid the said sum.

[Demand of judgment.]

## No. 16.

## SERVICES AT A FIXED PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant [hired plaintiff as a clerk, at the salary of.....dollars per year].

2. From the [said day] until the.....day of....., 19..., the plaintiff served the defendant as his [clerk].

3. The defendant has not paid the said salary.

[Demand of judgment.]



## No. 17.

## SERVICES AT A REASONABLE PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. Between the.....day of....., 19..., and the.....day of....., 19..., at....., plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The said services were reasonably worth.....dollars.

3. The defendant has not paid the same.

[Demand of judgment.]

## No. 18.

## SERVICES AND MATERIALS AT A FIXED PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., plaintiff [furnished the paper for and printed one thousand copies of a book called.....] for the defendant, at his request [and delivered the same to him].

2. The defendant promised to pay.....dollars therefor.

3. He has not paid the same.

[Demand of judgment.]

## No. 19.

## SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., plaintiff built a house [known as No....., in.....], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.

2. The said work and materials were reasonably worth.....dollars.

3. The defendant has not paid the same.

[Demand of judgment.]

## No. 20.

## RENT RESERVED IN A LEASE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[Or state the substance of the contract.]

2. The defendant has not paid the rent of the [month] ending on the.....day of....., 19..., amounting to.....dollars.

[Demand of judgment.]



*Another form.*

1. The plaintiff let to the defendant a house [No. 27, Batu Road], for [seven years] to hold from the.....day of....., 19..., at.....dollars a year, payable quarterly.

2. Of such rent.....quarters are due and unpaid.

[Demand of judgment.]

## No. 21.

## USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant hired from the plaintiff (the house No....., .....street, at the rent of .....dollars, payable..... on the first day of.....

2. The defendant occupied the said premises from the..... day of....., 19..., to the.....day of....., 19....

3. The defendant has not paid.....dollars being the part of said rent due on the first day of ..... , 19....

[Demand of judgment.]

## No. 22.

## USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A.B., the above-named plaintiff, executor of the will of X.Y., deceased, states as follows:

1. The defendant occupied the [house No....., .....street], by permission of the said X.Y., from the.....day of....., 19..., until the.....day of....., 19..., and no agreement was made as to payment for the use of the said premises.

2. The use of the said premises for the said period was reasonably worth.....dollars.

3. The defendant has not paid the same.

4. The plaintiff as such executor as aforesaid prays judgment for .....dollars.

## No. 23.

## BOARD AND LODGING.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. From the.....day of....., 19..., until the.....day of ..... , 19..., the defendant occupied certain rooms in the house [No....., .....street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessities.

2. In consideration thereof, the defendant promised to pay [or, no agreement was made as to payment for such meat, drink, attendance or necessities, but the same were reasonably worth] the sum of.....dollars.

3. The defendant has not paid the same.

[Demand of judgment.]



## No. 24.

## FREIGHT OF GOODS.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., at....., plaintiff transported in [his barge, or otherwise] [one thousand barrels of flour, or sundry goods], from.....to....., at the request of the defendant.

2. The defendant promised to pay the plaintiff the sum of [one dollar per barrel] as freight thereon [or, no agreement was made as to payment for such transportation, but such transportation was reasonably worth.....dollars].

3. The defendant has not paid the same.

[Demand of judgment.]

## No. 25.

## PASSAGE-MONEY.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., plaintiff conveyed the defendant [in his ship, called the.....], from.....to.....at his request.

2. The defendant promised to pay the plaintiff.....dollars therefor [or, no agreement was made as to price of the said passage, but the said passage was reasonably worth.....dollars].

3. The defendant has not paid the same.

[Demand of judgment.]

## No. 26.

## ON AN AWARD.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., at....., the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed to submit the same to the award of E.F. and G.H. as arbitrators [or, entered into an agreement, a copy of which is hereto annexed].

2. On the.....day of....., 19...., at....., the said arbitrators awarded that the defendant should [pay the plaintiff.....dollars].

3. The defendant has not paid the same.

[Demand of judgment.]



## No. 27.

## ON A FOREIGN JUDGMENT.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., at....., in the State [or Kingdom] of....., the.....Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff.....dollars, with interest from the said date.

2. The defendant has not paid the same.

[Demand of judgment.]

## B.—PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

## No. 28.

## ON AN ANNUITY BOND.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., at....., the defendant by his bond became bound to the plaintiff in the sum of.....dollars, to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff.....dollars, half-yearly on the.....day of.....and the.....day of.....in every year during the life of the plaintiff, the said bond should be void.

2. Afterwards, on the.....day of....., 19...., the sum of.....dollars, for.....of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[Demand of judgment.]

## No. 29.

## PAYEE AGAINST MAKER.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., at....., the defendant, by his promissory note, now overdue, promised to pay to the plaintiff .....dollars.....[days] after date.

2. He has not paid the same [except.....dollars, paid on the .....day of....., 19....].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute—]

1. On the.....day of....., 19...., at....., the defendant by his promissory note promised to pay to the plaintiff.....dollars, .....months after notice.

2. Notice was afterwards given by the plaintiff to the defendant to pay the same.....months after the said notice.

3. The said time for payment has elapsed, but the defendant has not paid the same.



[Where the note is payable at a particular place, say—]

1. On the.....day of....., 19..., at....., the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. & Co.'s, Ipoh], .....dollars, .....months after date.

2. The said note was duly presented for payment [at Messrs. A. & Co.'s] aforesaid, but has not been paid.

WRITTEN STATEMENT OF THE DEFENDANT.

In the Court, etc.

C.D., the above-named defendant, states as follows:

1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as indigo manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership books and enquire into the state of the partnership assets and liabilities: and he did accordingly examine the said books and make the said enquiries, and he thereupon represented to the defendant that the assets of the firm exceeded \$100,000 and that the liabilities of the firm were less than \$30,000, whereas the fact was that the assets of the firm were less than \$50,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant, by his promissory note, now overdue, promised to pay to the order of E.F. [or to E.F. or order] .....dollars [.....days after date].

2. The said E.F. indorsed the same to the plaintiff.

3. The defendant has not paid the same.

[Demand of judgment.]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. [As in the last preceding form.]

2. The same was, by the indorsement of the said E.F. and of G.H. and I.J. [or, and others] transferred to the plaintiff.

3. The defendant has not paid the same.

[Demand of judgment.]



## No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. E.F., on the.....day of....., 19...., at....., by his promissory note, now overdue, promised to pay to the defendant or order.....dollars.....months after date.

2. The defendant indorsed the same to the plaintiff.

3. On the.....day of....., 19...., the same was duly presented for payment, but was not paid.

[Or state facts excusing want of presentment.]

4. The defendant had notice thereof.

5. He has not paid the same.

[Demand of judgment.]

## No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE  
INDORSEMENT BEING SPECIAL.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The defendant indorsed to one E.F. a promissory note, now overdue, made [or purporting to have been made] by one G.H., on the.....day of....., 19...., at....., to the order of the defendant, for the sum of.....dollars [payable.....days after date].

2. The same was, by the indorsement of the said E.F. [and others], transferred to the plaintiff [or, the said E.F. indorsed the same to the plaintiff].

3, 4 and 5. [Same as 3, 4 and 5 of the last preceding form.]

[Demand of judgment.]

## No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The defendant indorsed to him a promissory note, now overdue, made [or purporting to have been made] by one E.F., on the.....day of....., 19...., at....., to the order of one G.H., for the sum of.....dollars [payable.....days after date], and indorsed by the said G.H. to the defendant.

2, 3 and 4. [Same as in 3, 4 and 5 in form No. 33.]

[Demand of judgment.]



## No. 35.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. A promissory note, now overdue, made [or purporting to have been made] by one E.F., on the.....day of....., 19...., at....., to the order of one G.H., for the sum of.....dollars [payable..... days after date], and indorsed by the said G.H. to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 and 4. [As in No. 33.]

[Demand of judgment.]

## No. 36.

## SUBSEQUENT INDORSEE AGAINST MAKER, AND FIRST AND SECOND INDORSER.

In the Court of.....at.....

Civil Suit No.....

A.B. of.....

against

C.D. of.....

E.F. of.....

and G.H. of.....

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., at....., the defendant, C.D., by his promissory note, now overdue, promised to pay to the order of the defendant, E.F.,.....dollars [.....months after date].

2. The said E.F. indorsed the same to the defendant, G.H., who indorsed it to the plaintiff.

3. On the.....day of....., 19...., the same was presented [or state facts excusing want of presentment] to the said C.D. for payment, but was not paid.

4. The said E.F. and G.H. had notice thereof.

5. They have not paid the same.

[Demand of judgment.]

## No. 37.

## DRAWER AGAINST ACCEPTOR.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., at....., by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him.....dollars [.....days after date, or sight, thereof].

2. The defendant accepted the said bill. [If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.]



3. He has not paid the same.

4. By reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[Demand of judgment.]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. On, etc., at etc., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to E.F. or order.....dollars.....months after date.

2. The plaintiff delivered the said bill to the said E.F. on.....

3. The defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., the defendant accepted a bill of exchange, now overdue, made [or purporting to have been made] by one E.F., on the.....day of....., 19..., at....., requiring the defendant to pay to the plaintiff.....dollars..... after sight thereof.

2. He has not paid the same.

[Demand of judgment.]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., the defendant accepted a bill of exchange, now overdue, made [or purporting to have been made] by one E.F., on the.....day of....., 19..., at....., requiring the defendant to pay to the order of one G.H.....dollars..... after sight thereof.

2. The said G.H. indorsed the same to the plaintiff.

3. The defendant has not paid the same.

[Demand of judgment.]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. [As in the last preceding form to the end of paragraph 1.]

2. By the indorsement of the said G.H. [and others], the same was transferred to the plaintiff.

3. The defendant has not paid the same.

[Demand of judgment.]



## No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., at....., the defendant, by his bill of exchange, directed to E.F., required the said E.F. to pay to the plaintiff.....dollars [.....days after sight.]
2. On the .....day of....., 19...., the same was duly presented to the said E.F. for acceptance, and was dishonoured.
3. The defendant had due notice thereof.
4. He has not paid the same.

[Demand of judgment.]

## No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The defendant indorsed to the plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one E.F., on the.....day of....., 19...., at....., requiring one G.H. to pay to the order of the defendant.....dollars [.....days] after sight [or after date, or at sight] thereof [and accepted by the said G.H. on the.....day of....., 19....].
2. On the.....day of....., 19...., the same was presented to the said G.H. for payment, and was dishonoured.
3. The defendant had due notice thereof.
4. He has not paid the same.

[Demand of judgment.]

## No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE  
INDORSEMENT BEING SPECIAL.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The defendant indorsed to one E.F. a bill of exchange, now overdue, made [or purporting to have been made] by one G.H., on the.....day of....., 19...., at....., requiring one I.J. to pay to the order of the defendant.....dollars.....days after sight thereof [or otherwise], and accepted by the said I.J. on the.....day of....., 19.... [This clause may be omitted if not according to the fact.]
2. The same was, by the indorsement of the said E.F. [and others], transferred to the plaintiff.
3. On the.....day of....., 19...., the same was presented to the said I.J. for payment, and was dishonoured.
4. The defendant had due notice thereof.
5. He has not paid the same.

[Demand of judgment.]



## No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The defendant indorsed to plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one E.F., on the .....day of....., 19..., at....., requiring one G.H. to pay to the order of I.J.....dollars.....days after sight thereof [or otherwise], [accepted by the said G.H.] and indorsed by the said I.J. to the defendant.
2. On the.....day of....., 19..., the same was presented to the said G.H. for payment, and was dishonoured.
3. The defendant had due notice thereof.
4. He has not paid the same.

[Demand of judgment.]

## No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. A bill of exchange, now overdue, made [or purporting to have been made] by one E.F., on the.....day of....., 19..., at....., requiring one G.H. to pay to the order of one I.J.....dollars .....days after sight thereof [or otherwise], [accepted by the said G.H.] and indorsed by the said I.J. to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.
2. On the.....day of....., 19..., the same was presented to the said G.H. for payment, and was dishonoured.
3. The defendant has due notice thereof.
4. He has not paid the same.

[Demand of judgment.]

## No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant, C.D., by his bill of exchange, now overdue, directed to the defendant E.F., required the said E.F. to pay to the order of the defendant G.H.....dollars [.....days after sight thereof].
2. On the.....day of....., 19..., the said E.F. accepted the same.
3. The said G.H. indorsed the same to the plaintiff.
4. On the.....day of....., 19..., the same was presented to the said E.F. for payment, and was dishonoured.
5. The other defendants had due notice thereof.
6. They have not paid the same.

[Demand of judgment.]



## No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant by his bill of exchange, drawn in Taiping, required one E.F. to pay to the plaintiff in [London].....pounds sterling [sixty days] after sight thereof.

2. On the.....day of....., 19..., the same was presented to the said E.F. for acceptance, and was dishonoured, and was thereupon duly protested.

3. The defendant had due notice thereof.

4. He has not paid the same.

[5. The value of.....pounds sterling, at the time of the service of notice of protest on the defendant, was.....dollars.]

Wherefore the plaintiff demands judgment against the defendant for.....dollars, with [ten per centum] compensation and interest from the.....day of....., 19....

## No. 48.

PAYEE AGAINST ACCEPTOR.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., one E.F., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff.....dollars after date [or..... days after sight] thereof.

2. On the.....day of....., 19..., the defendant accepted the said bill.

3. He has not paid the same.

[Demand of judgment.]

## No. 49.

ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA, ETC.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The plaintiff was the owner of [or had an interest in] the ship .....at the time of her loss, as hereinafter mentioned.

2. On the.....day of....., 19..., at....., the defendants, in consideration of.....dollars to them paid [or which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed [or, whereby they promised to pay to the plaintiff, within.....days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from .....to....., whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding.....dollars].

3. The said ship, while proceeding on the voyage mentioned in the said policy, was on the.....day of....., 19..., totally lost by the perils of the sea [or otherwise].



4. The plaintiff's loss thereby was.....dollars.

5. On the.....day of....., 19..., he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. The defendants have not paid the said loss.

[Demand of judgment.]

—  
No. 50.

ON CARGO, LOST BY FIRE:—VALUED POLICY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] on board the ship.....at the time of her loss as hereinafter mentioned.

2. On the.....day of....., 19..., at....., the defendants, in consideration of.....dollars, which the plaintiff then paid [or promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed [or, whereby they promised to pay to the plaintiff.....dollars in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at.....; or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed.....per centum of the whole value of the goods].

3. On the.....day of....., 19..., at....., while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (or, as the case may be).

4, 5 and 6. [As in paragraphs 4, 5 and 6 of the last preceding form.]

[Demand of judgment.]

—  
No. 51.

ON FREIGHT:—VALUED POLICY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The plaintiff had an interest in the freight to be earned by the ship.....on her voyage from.....to.....at the time of her loss as hereinafter mentioned and a large quantity of goods was shipped upon freight in her at that time.

2. On the.....day of....., 19..., at....., the defendant, in consideration of.....dollars to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [or state its tenor, as before].

3. The said ship, while proceeding upon the voyage mentioned in the said policy, was, on the.....day of....., 19..., totally lost by [the perils of the sea].

4. The plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [As in form No. 49.]

[Demand of judgment.]



## No. 52.

## LOSS BY GENERAL AVERAGE.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] shipped on board a vessel called the Y.Z., from.....to....., at the time of the loss hereinafter mentioned.
2. On the.....day of....., 19..., at....., in consideration of .....dollars [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [or state its tenor, as before].
3. On the.....day of....., 19..., while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.
4. The plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of.....dollars.
5. On the.....day of....., 19..., he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.
6. The defendant has not paid the said loss.

[Demand of judgment.]

## No. 53.

## PARTICULAR AVERAGE LOSS.

(Title.)

A.B., the above-named plaintiff, states as follows :

- 1 and 2. [As in the last preceding form.]
3. On the.....day of....., 19..., while on the high seas, the sea water broke into the said ship, and damaged the said [cotton] to the amount of.....dollars.
- 4 and 5. [As in paragraphs 5 and 6 of the last preceding form.]

[Demand of judgment.]

## No. 54.

## ON A FIRE-INSURANCE POLICY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The plaintiff [was the owner of, or] had an interest in a [dwelling-house, known as No....., .....street, in the town of .....], at the time of its destruction [or, injury] by fire as herein-after mentioned.
2. On the.....day of....., 19..., at....., in consideration of .....dollars [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [or state its tenor].



3. On the.....day of....., 19..., the said [dwelling-house] was totally destroyed [or greatly damaged] by fire.

4. The plaintiff's loss thereby was.....dollars.

5. On the.....day of....., 19..., he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. The defendants have not paid the said loss.

[Demand of judgment.]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., one E.F. hired from the plaintiff, for the term of.....years, the [house No....., .....street, .....] at the annual rent of.....dollars, payable [monthly].

2. [At the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said E.F., to guarantee the punctual payment of the said rent.

3. The rent aforesaid for the month of....., 19..., amounting to .....dollars has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety, add :—]

4. On the.....day of....., 19..., the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. He has not paid the same.

[Demand of judgment.]

C.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

BREACH OF AGREEMENT TO CONVEY LAND.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[Or, on, etc., the defendant agreed with the plaintiff that, in consideration of a deposit of.....dollars then paid, and of the further sum of [ten thousand] dollars payable as hereinafter mentioned, he would, on the.....day of....., 19..., at....., execute to the plaintiff a sufficient conveyance of [the house No....., .....street, in the town of....., free from all incumbrances] ; and the plaintiff agreed to pay [ten thousand] dollars for the same on delivery thereof.]



2. On the.....day of....., 19..., the plaintiff demanded the conveyance of the said property from the defendant and tendered .....dollars to the defendant [or, that all conditions were fulfilled, and all things happened, and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. The defendant has not executed any conveyance of the said property to the plaintiff [or, that there is a mortgage upon the said property, made by.....to....., for.....dollars, registered in the office of....., on the.....day of....., 19..., and still unsatisfied, or any other defect of title].

4. The plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for.....dollars compensation.

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No. 57.

BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[Or, on the.....day of....., 19..., at....., the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty acres of land in the village of.....for.....dollars.]

2. On the.....day of....., 19..., at....., the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument], on the payment by the defendant of the said sum.

3. The defendant has not paid the same.

[Demand of judgment.]

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No. 58.

*Another form.*

NOT COMPLETING A PURCHASE OF IMMOVABLE PROPERTY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. By an agreement dated the.....day of....., 19..., it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should



purchase from the plaintiff a house and land at the price of..... dollars, upon the terms and conditions following (that is to say)—

(a) That the defendant should pay to the plaintiff a deposit of .....dollars in part of the said purchase-money on the signing of the said agreement, and the remainder on the .....day of....., 19..., on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the.....day of....., 19..., and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. All conditions were fulfilled, and all things happened, and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid.

3. The plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

No. 59.

NOT DELIVERING GOODS SOLD.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the.....day of....., 19...], and that the plaintiff should pay therefor.....dollars on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. The defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[Demand of judgment.]

No. 60.

BREACH OF CONTRACT TO EMPLOY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services..... dollars [monthly].



2. On the.....day of....., 19..., the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always has notice.

3. On the.....day of....., 19..., the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[Demand of judgment.]

No. 61.

BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT  
NEVER TOOK EFFECT.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. [As in last preceding form.]

2. On the.....day of....., 19..., at....., the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. The defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[Demand of judgment.]

No. 62.

BREACH OF CONTRACT TO SERVE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of.....dollars, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the said agreement [and on the.....day of....., 19..., offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the.....day of....., 19..., he refused to serve the plaintiff as aforesaid.

[Demand of judgment.]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[Or state the tenor of the contract.]

[2. The plaintiff duly performed all the conditions of the said agreement on his part].

3. The defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[Demand of judgment.]



## No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN  
APPRENTICE.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant entered into an agreement, under his hand, a copy of which is hereto annexed.

[Or state the tenor of the contract.]

2. After the making of the said agreement the plaintiff received the said [apprentice] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. On the.....day of....., 19..., the said [apprentice] wilfully absented himself from the service of the plaintiff, and continues so to do.

[Demand of judgment.]

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No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant entered into an agreement with the plaintiff and his [father], E.F., under their hands, a copy of which is hereto annexed.

2. After the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. The defendant has not [instructed the plaintiff in the business of....., or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

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No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., plaintiff employed one E.F. as a clerk.

2. On the.....day of....., 19..., at....., the defendant agreed with the plaintiff that if the said E.F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding.....dollars.



[Or, 2. At the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of.....dollars, conditioned that if the said E.F. should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise.]

[Or, 2. At the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. Between the.....day of....., 19..., and the.....day of....., 19..., the said E.F. received money and other property, amounting to the value of.....dollars, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[Demand of judgment.]

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No. 67.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant, by an instrument in writing, let to the plaintiff [the house No....., .....street], for the term of.....years, contracting with the plaintiff that he, the plaintiff, and his legal representative should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the.....day of..... during the said term, one E.F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend.....dollars in moving, and lost the custom of G.H. and I.J. by such removal].

[Demand of judgment.]

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No. 68.

BREACH OF WARRANTY OF MOVABLES.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him.....dollars therefor.

2. The said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[Demand of judgment.]



## No. 69.

## ON AN AGREEMENT OF INDEMNITY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff and defendant, being partners in trade under the firm of A.B. and C.D., dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. The plaintiff duly performed all the conditions of the said agreement on his part.

3. On the.....day of....., 19..., [a judgment was recovered against the plaintiff and defendant by one E.F., in the Court of..... at....., upon a debt due from the said firm to the said E.F., and on the.....day of....., 19....] the plaintiff paid.....dollars [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[Demand of judgment.]

## No 70.

## BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[Or, 1. On....., at....., the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship....., at....., on the.....day of....., 19..., five hundred tons of merchandise, which she should carry to....., and there deliver, on payment of.....freight; and that the defendant should have.....days for loading, .....days for discharge, and.....days for demurrage, if required, at.....dollars per day.]

2. At the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, or, the merchandise mentioned in the said agreement] from the defendant.

3. The period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for.....dollars for demurrage and.....dollars additional for compensation.

## D.—PLAINTS FOR COMPENSATION FOR WRONGS.

## No. 71.

## TRESPASS ON LAND.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant entered upon certain land of the plaintiff, known as..... [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[Demand of judgment.]



## No. 72.

## TRESPASS IN ENTERING A DWELLING-HOUSE.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The defendant entered a dwelling-house of the plaintiff, called ....., and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. The plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

## No. 73.

## TRESPASS ON MOVABLES.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [or, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, or as the case may be, and carried away the same and disposed of them to his own use].

[Or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.]

2. The plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him ; and was also prevented from selling them at.....fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [otherwise, state the injury according to the facts].

[Demand of judgment.]

## No. 74.

## CONVERSION OF MOVABLE PROPERTY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., the plaintiff was in possession of certain goods described in the schedule hereto annexed [or, of one thousand barrels of flour].

2. On that day, at....., the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[Demand of judgment.]

The Schedule.



## No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant, in consideration of the payment to him of.....dollars [or, .....dollars per barrel, per month, etc.], agreed to keep in his godown [one hundred barrels of flour] and to deliver the same to the plaintiff on payment of the said sum.

2. Thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3. On the.....day of....., 19..., the plaintiff requested the defendant to deliver the said goods, and tendered him.....dollars [or the full amount of storage due thereon], but the defendant refused to deliver the same.

4. The plaintiff was thereby prevented from selling the said goods to E.F. and the same are lost to the plaintiff.

[Demand of judgment.]

## No. 76.

PROCURING PROPERTY BY FRAUD.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth.....dollars over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of.....dollars.

3. The said representations were false [or, state the particular falsehoods] and were then known by the defendant to be so.

4. The defendant has not paid for the said goods. [Or, if the goods were not delivered, the plaintiff, in preparing and shipping the said goods and procuring their restoration expended.....dollars.]

[Demand of judgment.]

## No. 77.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO  
ANOTHER PERSON.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19..., at....., the defendant represented to the plaintiff that one E.F. was solvent and in good credit, and worth.....dollars over all his liabilities [or, that E.F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to the said E.F. [rice] of the value of.....dollars [on.....month's credit].



3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or, to deceive and injure the plaintiff].

4. The said E.F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[Demand of judgment.]

No. 78.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called.....and situate in....., and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. On the .....day of....., 19..., the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. By reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[Demand of judgment.]

No. 79.

CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called.....situate in.....

2. Ever since the.....day of....., 19..., the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. By reason of the premises the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]



## No. 80.

## OBSTRUCTING A WAY.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of.....].

2. He was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or, on foot] at all times of the year.

3. On the.....day of....., 19..., the defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or, on foot, or, in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [State special damage, if any.]

[Demand of judgment.]

*Another form.*

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from.....to.....so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or, into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

## No. 81.

## DIVERTING A WATER-COURSE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the....., in the village of....., district of.....

2. By reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. On the.....day of....., 19..., the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than.....sacks per day, whereas, before the said diversion of water, he was able to grind.....sacks per day.

[Demand of judgment.]



## No. 82.

## OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the.....day of....., 19..., the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

## No. 83.

## WASTE BY A LESSEE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., the defendant hired from him [the house No....., .....street] for the term of.....

2. The defendant occupied the same under such hiring.

3. During the period of such occupation the defendant greatly injured the premises [defaced the walls, tore up the floors and broke down the doors; or otherwise specify the injuries as far as possible].

The plaintiff prays judgment for.....dollars compensation.

## No. 84.

## ASSAULT AND BATTERY.

(Title.)

A.B., the above-named plaintiff, states as follows:

On the.....day of....., 19..., at....., the defendant assaulted and beat him.

The plaintiff prays judgment for.....dollars compensation.

## No. 85.

## ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., ..... at....., the defendant assaulted and beat him until he became insensible.

2. The plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay.....dollars for medical attendance, and has been ever since disabled [from using his right arm]. [Or otherwise state the damage, as the case may be.]

[Demand of judgment.]



## No. 86.

## ASSAULT AND FALSE IMPRISONMENT.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., at....., the defendant assaulted the plaintiff and imprisoned him for.....days [or hours] ; [state special damage, if any, thus—]

2. By reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [or otherwise as the case may be].

[Demand of judgment.]

## No. 87.

## INJURIES CAUSED BY NEGLIGENCE ON A RAILWAY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., the defendants were carriers of passengers by railway between.....and.....

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. While he was such passenger, at.....[or, near the station of.....; or, between the stations of.....and.....], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[Demand of judgment.]

[Or thus:—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven against the plaintiff, whereby, etc., as in § 3.]

## No. 88.

## INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. The plaintiff is a shoemaker, carrying on business at..... The defendant is a merchant of.....

2. On the.....day of....., 19...., the plaintiff was walking eastward along.....road in the town of....., at about 3 o'clock in the afternoon. He was obliged to cross.....street, which is a street



running into.....road at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of.....street into.....road. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims.....dollars damages.

(Title.)

WRITTEN STATEMENT OF DEFENDANT.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. E.F. and G.H.] of.....street, ....., livery stable-keepers, employed by the defendant to supply him with carriages and horses, and the person under whose charge and control the said carriage was was the servant of the said [Messrs. E.F. and G.H.].

2. The defendant does not admit that the said carriage was turned out of.....street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of ..... 19.... at....., the defendant published in a newspaper, called the.....[or, in a letter addressed to E.F.], the following words concerning the plaintiff—

[Set forth the words used.]

2. The said publication was false and malicious.

[Demand of judgment.]



## No. 90.

LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff [is, and] was, on and before the.....day of ....., 19..., a merchant doing business in the town of.....
2. On the.....day of....., 19..., at....., the defendant published in a newspaper, called the.....[or, in a letter addressed to E.F., or otherwise how published], the following words concerning the plaintiff—  
[“A.B., of this town, has modestly retired to foreign lands. It is said that creditors to the amount of.....dollars are anxiously seeking his address.”]
3. The defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].
4. The said publication was false and malicious.

[Demand of judgment.]

## No. 91.

SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant falsely and maliciously spoke, in the hearing of E.F. [or sundry persons], the following words concerning the plaintiff—[“He is a thief”].
2. In consequence of the said words the plaintiff lost his situation as.....in the employ of.....

[Demand of judgment.]

## No. 92.

SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant falsely and maliciously said to one E.F. concerning the plaintiff—[“He is a young man of remarkably easy conscience”].
2. The plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.
3. In consequence of the said words [the said E.F. refused to employ the plaintiff as a clerk].

[Demand of judgment.]



## No. 93.

## MALICIOUS PROSECUTION.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., at....., the defendant obtained a warrant of arrest from.....[a Magistrate of the said town, or, as the case may be], on a charge of....., and the plaintiff was arrested thereon, and imprisoned for.....[days, or hours, and gave bail in the sum of.....dollars to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the.....day of....., 19...., the said Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff hearing of the said arrest, and supposing the plaintiff to be a criminal have ceased to do business with him; or, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E.F.; or, by reason of the premises the plaintiff suffered pain of body and mind and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[Demand of judgment.]

## E.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

## No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVABLE PROPERTY.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. X.Y. was the absolute owner [of the estate, called....., situate in the district of..... and of the estimated value of..... dollars; or, of the house No....., .....street, in the town of....., the estimated value of which is.....dollars].

2. On the.....day of....., 19...., Z. illegally dispossessed the said X.Y. of the said estate [or house].

3. The said X.Y. has since died intestate, leaving the plaintiff, the said A.B., his heir, him surviving.

4. The defendant withholds the possession of the estate [or house] from the plaintiff.

The plaintiff prays judgment—

- (1) For the possession of the said premises;
- (2) For.....dollars compensation for withholding the same.

*Another form.*

A.B., the above-named plaintiff, states as follows :

1. On the.....day of.....the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, .....street, in the.....] for a term of five years from the.....day of....., at the monthly rent of 300 dollars.



2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the.....day of....., 19...., a month's rent became due, and on the.....day of....., 19...., another month's rent became due; on the.....day of....., 19...., both had been in arrear for twenty-one days and both are still due.

5. On the same.....day of....., 19...., the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims—

- (1) Possession of the said house and premises ;
- (2) .....dollars for arrears of rent ;
- (3) .....dollars compensation for the defendant's breach of his covenant to repair ;
- (4) .....dollars for the occupation of the house and premises from the.....day of....., 19...., to the day of recovering possession.

#### No. 95.

BY THE TENANT.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. One E.F. is the absolute owner of [a piece of land in the town of....., bounded as follows :.....], the estimated value of which is .....dollars.

2. On the.....day of....., 19...., the said E.F. let the said premises to the plaintiff for.....years, from.....

3. The defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

#### No. 96.

MOVABLE PROPERTY WRONGFULLY TAKEN.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. On the.....day of....., 19...., plaintiff owned [or was possessed of] one hundred barrels of flour, the estimated value of which is .....dollars.

2. On that day, at....., the defendant took the same.

The plaintiff prays judgment—

- (1) For the possession of the said goods, or for.....dollars in case such possession cannot be had ;
- (2) For.....dollars compensation for the detention thereof.



## No. 97.

## MOVABLES WRONGFULLY DETAINED.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., plaintiff owned [or, state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is .....dollars.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of this suit—to wit, on the.....day of....., 19...—the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment—

- (1) For the possession of the said goods, or for.....dollars in case such possession cannot be had;
- (2) For.....dollars compensation for the detention thereof.

The Schedule.

## No. 98.

## AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., at....., the defendant [C.D.], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth .....dollars over all his liabilities].

2. The plaintiff was thereby induced to sell and deliver to the said C.D. [one hundred boxes of tea], the estimated value of which is .....dollars.

3. The said representations were false, and were then known by the said C.D. to be so. [Or, That at the time of making the said representations, the said C.D. was insolvent, and knew himself to be so.]

4. The said C.D. afterwards transferred the said goods to the defendant E.F. without consideration [or who had notice of the falsity of the representation].

The plaintiff prays judgment—

- (1) For the possession of the said goods, or for .....dollars in case such possession cannot be had;
- (2) For.....dollars compensation for the detention thereof.

## F.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

## No. 99.

## FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19..., the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at....., contained [ten acres].



2. The plaintiff was thereby induced to purchase the same at the price of.....dollars in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. On the.....day of....., 19..., the plaintiff paid the defendant.....dollars as part of such purchase-money.

4. The said piece of ground contained in fact only [five acres].

The plaintiff prays judgment—

(1) For.....dollars with interest from the.....day of....., 19...;

(2) That the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is the absolute owner of [describe the property].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[Pecuniary compensation might also be prayed.]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No....., .....street, .....].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street.....].

3. On the.....day of....., 19..., the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. [The plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same.]

The plaintiff prays judgment that the said nuisance be abated.



## No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.  
(Title.)

A.B., the above-named plaintiff, states as follows:

[As in Form No. 81.]

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

## No. 103.

FOR RESTORATION OF MOVABLE PROPERTY THREATENED WITH  
DESTRUCTION, AND FOR AN INJUNCTION.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. The plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [or, state any facts showing that the property is of a kind that cannot be replaced by money].

2. On the.....day of....., 19...., he deposited the same for safe keeping with the defendant.

3. On the.....day of....., 19...., he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

The plaintiff prays judgment—

- (1) That the defendant be restrained by injunction from disposing of, injuring, or concealing the said [painting];
- (2) That he return the same to the plaintiff.

## No. 104.

INTERPLEADER.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. Before the date of the claims hereinafter mentioned one G.H. deposited with the plaintiff [describe the property] for [safekeeping].

2. The defendant C.D. claims the same [under an alleged assignment thereof to him from the said G.H.].

3. The defendant E.F. also claims the same [under an order of the said G.H. transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.



5. He claims no interest in the said property, other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. This suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment—

- (1) That the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;
- (2) That they be required to interplead\* together concerning their claims to the said property;
- [(3) That some person be authorized to receive the said property pending such litigation;]
- (4) That upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(Title.)

A.B., the above-named plaintiff, states as follows:

1. E.F., late of....., was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of.....[here insert nature of debt and security, if any].
2. The said E.F. made his will, dated the.....day of....., and thereof appointed C.D. executor [or, devised his estate in trust, etc., or, died intestate, as the case may be].
3. The said will was proved by the said C.D. [or, letters of administration were granted, etc.].
4. The defendant has possessed himself of the movable [and immovable, or, the proceeds of the immovable] property of the said E.F., and has not paid the plaintiff his said debt.
5. The said E.F. died on or about the.....day of.....
6. The plaintiff prays that an account may be taken of the movable [and immovable] property of the said E.F., deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[Alter Form No. 105 thus:]

[Omit paragraph 1 and commence paragraph 2] E.F., late of....., duly made his last will, dated the.....day of....., and thereof appointed C.D. executor, and by such will bequeathed to the plaintiff [here state the specific legacy].

For paragraph 4 substitute—

The defendant is in possession of the movable property of the said E.F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc.



## No. 107.

## ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[Alter Form No. 105 thus:]

[Omit paragraph 1 and substitute for paragraph 2] E.F., late of ....., duly made his last will, dated the.....day of ....., and thereof appointed C.D. executor, and by such will bequeathed to the plaintiff a legacy of.....dollars.

In paragraph 4 substitute "legacy" for "debt".

*Another form.*

Between E.F.....Plaintiff,  
and G.H.....Defendant.

E.F., the above-named plaintiff, states as follows:

1. A.B., of K., in the....., duly made his last will, dated the .....day of....., 19..., whereby he appointed the defendant and M.N. [who died in the testator's lifetime] executors thereof, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the.....day of....., 19..., and his will was proved by the defendant on the.....day of....., 19.... The plaintiff has not been married.

3. The testator was at his death entitled to movable and immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the movable property; he has sold some part of the immovable property.

The plaintiff claims—

- (1) To have the movable and immovable property of A.B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;
- (2) Such further or other relief as the nature of the case may require.

Between E.F.....Plaintiff,  
and G.H.....Defendant.

## WRITTEN STATEMENT OF DEFENDANT.

1. A.B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold, and which produced the nett sum of.....dollars, and the testator had some movable property which the defendant got in, and which produced the nett sum of.....dollars.



2. The defendant applied the whole of the said sums and the sum of.....dollars, which the defendant received from rents of the immovable property, in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the.....day of....., 19...., and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

#### No. 108.

#### EXECUTION OF TRUSTS.

In the Court of.....at.....

Civil Suit No.....

A.B. of.....Plaintiff,

against

C.D. of....., the beneficiary } Defendant.  
[or one of the beneficiaries]

A.B., the above-named plaintiff, states as follows :

1. The plaintiff is one of the trustees under an instrument of settlement bearing date on or about the.....day of....., made upon the marriage of E.F. and G.H., the father and mother of the defendant [or, an instrument of assignment of the estate and effects of E.F. for the benefit of C.D., the defendant, and other the creditors of E.F.].

2. The plaintiff has taken upon himself the burden of the said trust, and is in possession of [or, of the proceeds of] the movable and immovable property conveyed [or assigned] by the before-mentioned deed.

3. The said C.D. claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, or of part of the said, immovable property, or movable property, or the proceeds of the sale of, or of part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said C.D., the defendant, and all other persons who may be interested in such administration, in the presence of the said C.D. and such other persons so interested as the Court may direct, or that the said C.D. may show good cause to the contrary.

[N.B.—Where the suit is by a beneficiary, the plaint may be modelled *mutatis mutandis*, on the plaint by a legatee.]



## No. 109.

## SPECIFIC PERFORMANCE. (NO. 1.)

(Title.)

A.B., the above-named plaintiff, states as follows:

1. By an agreement dated the .....day of....., and signed by the above-named defendant, C.D., he the said C.D. contracted to buy of [or sell to] him certain immovable property therein described and referred to, for the sum of.....dollars.

2. He has applied to the said C.D. specifically to perform the said agreement on his part, but he has not done so.

3. The said A.B. has been and still is ready and willing specifically to perform the agreement on his part of which the said C.D. has had notice.

4. The plaintiff prays that the Court will order the said C.D. specifically to perform the said agreement and to do all acts necessary to put the said A.B. in full possession of the said property [or to accept a conveyance and possession of the said property] and to pay the costs of the suit.

[N.B.—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]

## No. 110.

## SPECIFIC PERFORMANCE. (NO. 2.)

(Title.)

A.B., the above-named plaintiff, states as follows:

1. On the.....day of....., 19...., the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2. On the same day the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. On the.....day of....., 19...., the plaintiff tendered.....dollars to the defendant, and demanded a conveyance of the said property

4. On the.....day of....., 19...., the plaintiff again demanded such conveyance. [Or. That the defendant refused to convey the same to the plaintiff.]

5. The defendant has not executed such conveyance.

6. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment—

(1) That the defendant execute to the plaintiff a sufficient conveyance of the said property [following the terms of the agreement];

(2) For.....dollars compensation for withholding the same.



## No. 111.

## PARTNERSHIP.

(Title.)

A.B., the above-named plaintiff, states as follows :

1. He and the said C.D., the defendant, have been for the space of .....years [or months] last past carrying on business together at....., within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [or, under a certain deed sealed and executed by them respectively; or, under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [or deed, or agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge and the payment of the said costs, may be divided between the plaintiff and defendant according to the terms of the said articles [or deed, or agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by..... of....., solicitor for the plaintiff, .....[or by.....].

[N.B.—In suits for winding-up of any partnership, omit the prayer for dissolution; but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.]

## No. 112.

## FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 49.]

Money lent.	The plaintiff's claim is \$.....for money lent [and interest].
Several demands.	The plaintiff's claim is \$.....whereof \$.....is for the price of goods sold, and \$.....for money lent, and \$.....for interest.
Rent.	The plaintiff's claim is \$.....for arrears of rent.
Salary, etc.	The plaintiff's claim is \$.....for arrears of salary as a clerk [or, as the case may be].
Interest.	The plaintiff's claim is \$.....for interest upon money lent.



The plaintiff's claim is \$.....for a general average contribution.	General average.
The plaintiff's claim is \$.....for freight and demurrage.	Freight, etc.
The plaintiff's claim is \$.....for money deposited with the defendant as a banker.	Banker's balance.
The plaintiff's claim is \$.....for fees for work done [and \$..... money expended] as a solicitor.	Fees, etc., as solicitor.
The plaintiff's claim is \$.....for commission earned as [state character—as auctioneer, cotton-broker, etc.].	Commission.
The plaintiff's claim is \$.....for medical attendance.	Medical attendance.
The plaintiff's claim is \$.....for a return of premiums paid upon policies of insurance.	Return of premium.
The plaintiff's claim is \$.....for the warehousing of goods.	Warehouse-rent.
The plaintiff's claim is \$.....for the carriage of goods by railway.	Carriage of goods.
The plaintiff's claim is \$.....for the use and occupation of a house.	Use and occupation of house.
The plaintiff's claim is \$.....for the hire of [furniture].	Hire of goods.
The plaintiff's claim is \$.....for work done as a [surveyor].	Work done.
The plaintiff's claim is \$.....for board and lodging.	Board and lodging.
The plaintiff's claim is \$.....for the [board, lodging and] tuition of X.Y.	Schooling.
The plaintiff's claim is \$.....for money received by the defendant as solicitor [or factor, or collector, or etc.] of the plaintiff.	Money received.
The plaintiff's claim is \$.....for fees received by the defendant under colour of the office of.....	Fees of office.
The plaintiff's claim is \$.....for a return of money overcharged for the carriage of goods by railway.	Money over-paid.
The plaintiff's claim is \$.....for a return of fees overcharged by the defendant as.....	
The plaintiff's claim is \$.....for a return of money deposited with the defendant as stake-holder.	Return of money by stake-holder.
The plaintiff's claim is \$.....for money entrusted to the defendant as stake-holder and become payable to the plaintiff.	Money won from stake-holder.
The plaintiff's claim is \$.....for a return of money entrusted to the defendant as agent of the plaintiff.	Money entrusted to agent.
The plaintiff's claim is \$.....for a return of money obtained from the plaintiff by fraud.	Money obtained by fraud.
The plaintiff's claim is \$.....for a return of money paid to the defendant by mistake.	Money paid by mistake.
The plaintiff's claim is \$.....for a return of money paid to the defendant for [work to be done, or, work left undone; or, a bill to be taken up, or, a bill not taken up; or, etc.].	Money paid for consideration which has failed.
The plaintiff's claim is \$.....for a return of money paid as a deposit upon shares to be allotted.	Deposit on shares.



Money paid by surety for defendant.	The plaintiff's claim is \$.....for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is \$.....for money paid for rent due by the defendant.
Money paid on accommodation bill.	The plaintiff's claim is \$.....upon a bill of exchange accepted [or indorsed] for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is \$.....for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is \$.....for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.
Money paid for calls.	The plaintiff's claim is \$.....for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is \$.....for money payable under an award.
Life-policy.	The plaintiff's claim is \$.....upon a policy of insurance upon the life of X.Y., deceased.
Money-bond.	The plaintiff's claim is \$.....upon a bond to secure payment of \$.....and interest.
Foreign judgment.	The plaintiff's claim is \$.....upon a judgment of the..... Court in [the Empire of Japan].
Bills of exchange, etc.	The plaintiff's claim is \$.....upon a cheque drawn by the defendant.
	The plaintiff's claim is \$.....upon a bill of exchange accepted [or drawn, or indorsed] by the defendant.
	The plaintiff's claim is \$.....upon a promissory note made [or indorsed] by the defendant.
	The plaintiff's claim is \$.....against the defendant A.B. as acceptor, and against the defendant C.D. as drawer [or indorser] of a bill of exchange.
Surety.	The plaintiff's claim is \$.....against the defendant as surety for the price of goods sold.
	The plaintiff's claim is \$.....against the defendant A.B. as principal, and against the defendant C.D. as surety, for the price of goods sold [or for arrears of rent, or for money lent, or for money received by the defendant A.B. as traveller for the plaintiff, or etc.].
Calls.	The plaintiff's claim is \$.....for calls upon shares.

## INDORSEMENT FOR COSTS, ETC.

[Add to the above forms] and \$.....for costs; and if the amount claimed be paid to the plaintiff or his solicitor within..... days [or if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order] from the service hereof, further proceedings will be stayed.

## DAMAGES AND OTHER CLAIMS.

Agent, etc. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.



The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$.....for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [or, etc.] of the plaintiff [and \$.....for money received as factor, or, etc.].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X.Y. to the defendant [or plaintiff]. Apprentices.

The plaintiff's claim is for damages for non-compliance with the award of X.Y. Arbitration.

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution]. Assault, etc.

The plaintiffs' claim is for damages for assault and false imprisonment of the plaintiff, C.D. By husband and wife.

The plaintiff's claim is for damages for assault by the defendant, C.D. Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture [or, a carriage] lent on hire [and for wrongfully, etc.]. Hire.

The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque. Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a..... Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship [Mary]. Charter-party.

The plaintiff's claim is for return of household furniture [or, etc.] or their value, and for damages for detaining the same. Claim for return of goods; damages.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, etc. Damages for depriving of goods.



- Defamation, The plaintiff's claim is for damages for libel.  
The plaintiff's claim is for damages for slander.
- Wrongful distress, The plaintiff's claim is for damages for improperly distraining.  
[This form shall be sufficient whether the distress complained of be wrongful, or excessive, or irregular.]
- Ejectment, The plaintiff's claim is to recover possession of a house, No..... in.....street, or of a farm called Blackacre, situate in the..... of.....in the.....of.....
- To establish title and recover rents, The plaintiff's claim is to establish his title to [here describe property] and to recover the rents thereof.  
[The two previous forms may be combined.]
- Fishery, The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
- Fraud, The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [or a business, or shares, or, etc.].  
The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A.B.
- Guarantee, The plaintiff's claim is for damages for breach of a contract of guarantee for A.B.  
The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
- Insurance, The plaintiff's claim is for a loss under a policy upon the ship [Royal Charter], and freight of cargo [or for return of premiums].  
[This form shall be sufficient whether the loss claimed be total or partial.]
- Fire-insurance, The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.  
The plaintiff's claim is for damages for breach of a contract to insure a house.
- Landlord and tenant, The plaintiff's claim is for damages for breach of a contract to keep a house in repair.  
The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
- Medical man, The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
- Mischievous animal, The plaintiff's claim is for damages for injury by the defendant's dog.
- Negligence, The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.  
The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.  
The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.



The plaintiff's claim is as executor of A.B., deceased, for damages for the death of the said A.B. from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage. Promise of marriage.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods. Sale of goods.

The plaintiff's claim is for damages for non-delivery [or short delivery, or defective quality, or other breach of contract of sale] of cotton [or, etc.].

The plaintiff's claim is for damages for breach of warranty of a horse. Horse warranty.

The plaintiff's claim is for damages for breach of a contract to sell [or purchase] land. Sale of land.

The plaintiff's claim is for damages for breach of a contract to let [or take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [or purchase] the lease, with goodwill, fixtures and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [or for quiet enjoyment, or, etc.] in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river]. Trespass on land.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [or house, or mine]. Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [public highway, or private way]. Way.

The plaintiff's claim is for damages for wrongfully diverting [or obstructing, or polluting, or diverting water from] a water-course. Water-course, etc.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [or into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for infringement of the plaintiff's right of pasture. Pasture.

[This form shall be sufficient whatever the nature of the right to pasture be.]

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. Light.

The plaintiff's claim is for damages for infringement of the plaintiff's grant of exclusive privileges in respect of an invention. Invention.



Copyright.	The plaintiff's claim is for damages for infringement of the plaintiff's copyright.
Trade-mark.	The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade-mark.
Work.	The plaintiff's claim is for damages for breach of a contract to build a ship [or to repair a house, etc.]. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, etc.
Nuisance.	The plaintiff's claim is for damages to his house, trees, crops, etc., caused by noxious vapours from the defendant's factory [or, etc.]. The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, etc.].
Injunction.	[Add to indorsement] :—and for an injunction. [Add to indorsement where claim is to land, or to establish title, or both]—
Mesne profits.	And for mesne profits.
Arrears of rent.	And for an account of rents or arrears of rent.
Breach of covenant.	And for breach of covenant for [repairs].

## I.—CREDITOR TO ADMINISTER ESTATE.

The plaintiff's claim is as a creditor of X.Y., of....., deceased, to have the movable and immovable property of the said X.Y. administered. The defendant, C.D., is sued as the administrator of the said X.Y.

## II.—LEGATEE TO ADMINISTER ESTATE.

The plaintiff's claim is as a legatee under the will dated the..... day of....., 19..., of X.Y. deceased, to have the movable and immovable property of the said X.Y. administered. The defendant, C.D., is sued as the executor of the said X.Y. [and the defendants E.F. and G.H. as his devisees].

## III.—PARTNERSHIP.

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the.....day of.....], and to have the affairs of the partnership wound up.

## IV.—BY MORTGAGEE.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the..... day of....., made between [parties] [or, by deposit of title deeds], and that the mortgage may be enforced by foreclosure or sale.

## V.—RAISING PORTIONS.

The plaintiff's claim is that the sum of \$.....which, by a deed of settlement dated....., was provided for the portions of the younger children of.....may be raised.



## VI.—EXECUTION OF TRUSTS.

The plaintiff's claim is to have the trusts of an indenture dated .....and made between [parties] carried into execution.

## VII.—CANCELLATION OR RECTIFICATION.

The plaintiff's claim is to have a deed dated.....and made between [parties] set aside or rectified.

## VIII.—SPECIFIC PERFORMANCE.

The plaintiff's claim is for specific performance of an agreement dated the.....day of.....for the sale by the plaintiff to the defendant of certain land at.....

## No. 113.

## PROBATE.

## 1.—BY AN EXECUTOR OR LEGATEE PROPOUNDING A WILL IN SOLEMN FORM.

The plaintiff claims to be executor of the last will, dated the..... day of....., of C.D., late of....., deceased, who died on the.....day of....., and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [or, as the case may be].

## 2.—BY AN EXECUTOR OR LEGATEE OF A FORMER WILL, OR A NEXT-OF-KIN, ETC. OF THE DECEASED, SEEKING TO OBTAIN THE REVOCATION OF A PROBATE GRANTED IN COMMON FORM.

The plaintiff claims to be executor of the last will, dated the..... day of....., of C.D., late of....., deceased, who died on the.....day of....., and to have the probate of a pretended will of the said deceased, dated the.....day of....., revoked. This summons is issued against you as the executor of the said pretended will [or, as the case may be].

## 3.—BY AN EXECUTOR OR LEGATEE OF A WILL WHEN LETTERS OF ADMINISTRATION HAVE BEEN GRANTED AS IN AN INTESTACY.

The plaintiff claims to be executor of the last will of C.D., late of ....., deceased, who died on the.....day of....., dated the .....day of.....

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

## 4.—BY A PERSON CLAIMING A GRANT OF ADMINISTRATION AS A NEXT-OF-KIN OF THE DECEASED, BUT WHOSE INTEREST AS NEXT-OF-KIN IS DISPUTED.

The plaintiff claims to be the brother and sole next-of-kin of C.D., of....., deceased, who died on the.....day of....., intestate, and to have as such a grant of administration to the property of the said intestate. This writ is issued against you because you have entered a caveat and have alleged that you are the sole next-of-kin of the deceased [or, as the case may be].







## No. 115.

## SUMMONS FOR DISPOSAL OF SUIT.

(Title.)

To.....dwelling at.....

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

Whereas.....has instituted a suit against you for....., you are hereby summoned to appear in this Court in person or by a duly authorized solicitor of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on.....the.....day of....., 19....., at.....o'clock in the forenoon, to answer the above-named plaintiff; and, as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your solicitor....., which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the .....day of....., ....

If the summons is for service out of the Federated Malay States, delete “will be heard and determined” and substitute “may by leave of the Court be heard and determined”.

## 116.

## SUMMONS FOR SETTLEMENT OF ISSUES.

(Title.)

To.....dwelling at.....

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

Whereas.....has instituted a suit against you for....., you are hereby summoned to appear in this Court in person or by a duly authorized solicitor of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on.....the.....day of....., 19....., at.....o'clock in the forenoon, to answer the above-named



NOTICE—2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the issues will be settled in your absence; and you will bring with you, or send by your solicitor....., which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

Given under my hand and the seal of the Court, this .....day of....., 19....

[L. S.]

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the.....day of....., .....

No. 117.

SUMMONS TO APPEAR.

(Title.)

To.....

(Name, description and address.)

Whereas [here enter the name, description and address of the plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the register]: you are hereby summoned to appear in this Court in person on the.....day of....., at.....in the forenoon. [If not specially required to appear in person, state—"in person or by a solicitor of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff [if the summons be for the final disposal of the suit, this further direction shall be added here; "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"]; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [here mention any document the production of which may be required by the plaintiff], which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

Judge.



## No. 118.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURIS-  
DICTION OF ANOTHER COURT.

(Title.)

The.....day of....., 19....

Whereas it is stated in the plaint that....., the defendant in the above suit....., is at present residing in....., but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons, returnable on the.....day of....., 19...., be forwarded for service on the said defendant to the Court of ....., with a duplicate of this proceeding.

[L. S.]

.....  
*Judge.*

## No. 119.

## TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

\* In the Court of.....at.....

Civil Suit No.....of 19....

The.....day of....., 19....

A.B. of.....

against

C.D. of.....

Read the proceeding from the.....forwarding.....for service on.....in.....civil.....No.....of that Court.

Read bailiff's endorsement on the back of the process stating that the.....; and proof of the above having been duly taken by me on the [oath or] affirmation of.....and.....it is ordered that the .....be returned to the.....with a copy of this proceeding.

[L. S.]

.....  
*Judge.*

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

## No. 120.

## DEFENDANT'S STATEMENT.

(Title.)

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said E.F. in the plaint named [or, as next-of-kin, or one of the next-of-kin, of E.F., deceased, in the said plaint named].

Or, I, the undersigned defendant state, that I admit [or deny] [here repeat in the language of the plaint the statements admitted or denied].



Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or, that it appears upon the said plaint that I am jointly liable with one E.F., who is not a party to the suit, and not severally liable as by the plaint appears; or, that it appears by the said plaint that G.H. should have been a joint-plaintiff with the said A.B. in the said suit; or, as the case may be].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading [or, as the case may be].

(Signed) C.D.,

*Defendant.*

#### No. 121.

##### INTERROGATORIES.

In the Court of.....at.....

Civil Suit No..... of 19....

A.B.

against

C.D., E.F. and G.H.

Interrogatories on behalf of the above-named A.B. [or C.D.] for the examination of the above-named E.F. and G.H. [or, A.B.].

1. Did not, etc.,.....

2. Has not, etc.,.....

The defendant E.F. is required to answer the interrogatories numbered.....

The defendant G.H. is required to answer the interrogatories numbered.....

#### No. 122.

##### FORM OF NOTICE TO PRODUCE DOCUMENTS.

(Title.)

Take notice that the plaintiff [or defendant] requires you to produce for his inspection the following documents referred to in your plaint [or written statement, or affidavit], dated the.....day of ....., 19....

(Describe documents required.)

X.Y., Solicitor for the plaintiff [or the defendant].

To Z.,

Solicitor for the defendant [or plaintiff].



## No. 123.

## SUMMONS TO ATTEND AND GIVE EVIDENCE.

(Title.)

To.....

Whereas your attendance is required to.....on behalf of the .....in the above cause, you are hereby required [personally to appear before this Court] on the.....day of....., 19...., at the hour of.....a.m. [and] to bring with you or to send to this Court.....

A sum of \$....., being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure.

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are to be detained beyond the day aforesaid a sum of \$....., will be tendered to you for each day's attendance beyond the day specified.

Given under my hand and the seal of the Court, this.....day of ..... , 19....

[L. S.]

.....  
Judge.

## No. 124.

*Another form.*

(Title.)

To.....

[Name, description and address.]

You are hereby summoned to appear in this Court in person on the.....day of....., 19...., at....., in the forenoon, to give evidence on behalf of the plaintiff [or the defendant] in the above-mentioned suit, and to produce [here describe with convenient certainty any document the production of which may be required; if the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly], and you are not to depart thence until you have been examined [or have produced the document] and the Court has risen, unless you have obtained the leave of the Court.

## FORMS OF DECREES.

## No. 125.

## SIMPLE MONEY-DECREE.

(Title.)

Claim for.....

This cause coming on.....for final disposal before.....in the presence of.....on the part of the plaintiff, and.....on the part of the defendant, it is ordered that the.....do pay to.....the.....the sum of \$....., with interest thereon at the rate of.....per cent. per....., from.....to the date of realization of the said sum, and do also pay to the.....the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.



## COSTS OF SUIT.

Plaintiff.	—		Defendant.	—	
	\$	c.		\$	c.
1. Stamp for plaint...			Stamp for power ...		
2. „ for power			„ for petition ...		
3. „ for exhibits			Solicitor's fees ...		
4. Solicitor's fees ...			Subsistence for wit-		
5. Translation fee ...			nesses ...		
6. Subsistence for			Service of process ...		
witnesses ...			Translation fee ...		
7. Commissioner's fee			Commissioner's fee ...		
8. Service of process					
9. Etc. ...					
Total ...			Total ...		

Given under my hand and the seal of the Court, this.....day  
of..... 19....

[L. S.]

Judge.

No. 126.

DECREE FOR SALE IN A SUIT BY A PERSON ENTITLED TO A LIEN.

(Title.)

It is ordered that it be referred to the Registrar [or Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the lien mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [or Taxing Officer] do declare in Court on the.....day of.....what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due, it is ordered that the plaintiff do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating to the said lien, and that upon such documents being delivered up, the Registrar [or Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into Court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said premises subject to the said lien be sold with the approbation of the Registrar [or Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.



## No. 127.

## PRELIMINARY ORDER—ADMINISTRATION-SUIT.

(Title.)

It is ordered that the following accounts and enquiries be taken and made; that is to say:

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An enquiry be made and account taken of what, or of what share, if any, plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the order will, where necessary, order, in a creditor's suit, enquiry and accounts for legatees and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to enquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An enquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.

6. And it is further ordered that the defendant do, on or before the.....day of.....next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased, the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. E.F. be Receiver in the suit (or proceeding), and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the Registrar (and give security by bond for the due performance of his duties to the amount of.....dollars).

9. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further enquiries be made, and accounts taken, that is to say—

- (a) An enquiry what immovable property the deceased was possessed of or entitled to at the time of his death;



- (b) An enquiry what are the incumbrances (if any) affecting the immovable property of the deceased, or any part thereof;
- (c) An account, so far as possible, of what is due to the several incumbrancers, with a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immovable property of the deceased, or so much thereof as shall be necessary to make the fund in Court sufficient to carry out the objects of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered that G.H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered that, for the purpose of the enquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such enquiries in any other way which shall appear to the Registrar to give the most useful publicity to such enquiries.

13. And it is ordered that the above enquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the.....day of....., and that the Registrar do certify the result of the enquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the.....day of.....

14. And, lastly, it is ordered, that this suit [or matter] stand adjourned for making final decree to the.....day of.....

[Such part only of this order is to be used as is applicable to the particular case.]

#### No. 128.

#### FINAL DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE.

##### (Title.)

1. It is ordered that the defendant.....do on or before the .....day of.....pay into Court the sum of \$.....the balance by the said certificate found to be due from the said defendant on account of the estate of....., the testator, and also the sum of \$.....for interest, at the rate of \$.....per centum per annum, from the.....day of.....to the.....day of....., amounting together to the sum of \$.....

2. Let the Registrar [or Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of \$.....ordered to be paid into Court as aforesaid, as follows:

- (a) The costs of the plaintiff to Mr....., his attorney [or solicitor], and the costs of the defendant to Mr....., his attorney [or solicitor].



(b) And (if any debts are due) with the residue of the said sum of \$.....after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the.....schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the.....schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

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No. 129.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES

(Title.)

1. Declared that the defendant is personally liable to pay the legacy of \$.....bequeathed to the plaintiff;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered that the defendant do, within.....weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

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No. 130.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(Title.)

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of \$....., the balance by the said certificate found to be due from the said defendant on account of the personal estate of E.F., the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of \$....., after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by the defendant as follows:

(a) Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, A.B. and C., his wife, in her right as the sister and one of the next-of-kin of the said E.F., the intestate;



- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin, of the said E.F., the intestate;
- (c) And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to G.H., as the brother, and the other next-of-kin, of the said E.F., the intestate.

---

No. 131.

ORDER—DISSOLUTION OF PARTNERSHIP.

(Title.)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the .....day of....., and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette*, etc.

And it is ordered that.....be the Receiver of the partnership estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:

- (1) An account of the credits, property and effects now belonging to the said partnership;
- (2) An account of the debts and liabilities of the said partnership;
- (3) An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the.....day of....., and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the.....day of.....

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the.....day of.....

---

No. 132.

PARTNERSHIP—FINAL DECREE.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of \$....., be applied as follows:

- (1) In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to \$.....



- (2) In payment of the costs of all parties in this suit, amounting to \$.....

[These costs must be ascertained before the decree is drawn up.]

- (3) In payment of the sum of \$.....to the plaintiff as his share of the partnership assets and of the sum of \$....., being the residue of the said sum of \$.....now in Court, to the defendant as his share of the partnership assets.

[Or, And that the remainder of the said sum of \$..... be paid to the said plaintiff [or defendant] in part payment of the sum of \$.....certified to be due to him in respect of the partnership accounts.]

And that the defendant [or plaintiff] do on or before the..... day of.....pay to the plaintiff [or defendant] the sum of \$....., being the balance of the said sum of \$.....due to him, which will then remain due.

—  
No. 133.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

(Title.)

Certified that no [or partial, as the case may be, and if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No....., of 19..., a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
*Judge.*

—  
No. 134.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

(Title.)

To.....

Whereas.....has made application to this Court for execution of decree in Civil Suit No....., 19..., this is to give you notice that you are to appear before this Court.....on the..... day of....., 19..., either in person, or by a solicitor of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
*Judge.*



## No. 135.

WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN DEFENDANT'S  
POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

(Title.)

To the Bailiff of the Court.

Whereas.....was ordered, by decree of this Court, passed on the.....day of....., 19..., in Suit No.....of 19..., to pay to the plaintiff the sum of \$.....as noted in the margin; and whereas the said sum of \$.....has not been paid:

Decree.				\$	c.
Principal	...	...	...		
Interest	...	...	...		
Costs	...	..	...		
Costs of decree	...	...	...		
Interest thereon	...	...	...		
Total of attachment	...	...	...		
Total	...	...	...		

These are to command you to attach the movable property of the said.....as set forth in the list hereunto annexed, or which shall be pointed out to you by the said....., and unless the said.....shall pay to you the said sum of \$....., together with \$.....the costs of this attachment, to hold the same

until further orders from this Court.

You are further commanded to return this warrant on or before the.....day of....., 19..., with an endorsement certifying the date and manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this.....day of ....., 19....

Schedule.

[L. S.]

.....  
Judge.

## No. 136.

## WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC.

(Title.)

To the Bailiff of the Court.

Whereas....., in the occupancy of....., has been decreed to....., the plaintiff in this suit: you are hereby directed to put the said.....into possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
Judge.



## No. 137.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

(Title.)

To.....

Whereas.....has failed to satisfy a decree passed against ..... on the.....day of....., 19..., .....in favour of..... for \$.....: it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from.....the following property in the possession of the said....., that is to say, .....to which the defendant is entitled, subject to any claim of the said....., and the said.....is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

Given under my hand and the seal of the Court, this.....day of ..... 19....

[L. S.]

.....  
*Judge.*

## No. 138.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

(Title.)

To.....

Whereas.....has failed to satisfy a decree passed against ..... on the.....day of....., 19..., in Civil Suit No. .... of 19..., in favour of.....for \$.....: it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely,.....; and that you the said....., be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
*Judge.*

## No. 139.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A CORPORATION.

To.....Defendant, and to.....Manager of.....

Whereas.....has failed to satisfy a decree passed against..... on the.....day of....., 19..., in Civil Suit No. .... of 19..., in favour of.....for \$.....: it is ordered that you the defendant,



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be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of.....shares in the aforesaid corporation, namely,....., or from receiving payment of any dividends thereon; and you....., the Manager of the said corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
*Judge.*

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF  
IMMOVABLE PROPERTY.

(Title.)

To....., Defendant.

Whereas you have failed to satisfy a decree passed against you on the.....day of....., 19..., in Civil Suit No.....of 19..., in favour of....., for \$.....: it is ordered that you, the said....., be, and you are hereby, prohibited and restrained until the further order of this Court from transferring or charging in any way the property specified in the schedule hereunto annexed, and that all persons be, and they are hereby, prohibited from taking any benefit from any transfer or charge of the said property.

Given under my hand and the seal of the Court, this.....day of ....., 19....

Schedule.

[L. S.]

.....  
*Judge.*

No. 141.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY  
SECURITY IN THE HANDS OF A COURT OR A PUBLIC OFFICER.

(Title.)

To.....

Sir,—The plaintiff having applied, under section.....of the Code of Civil Procedure, for an attachment of certain money now in your hands (here state how the money is supposed to be in the hands of the person addressed, on what account, etc.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient servant,

[L. S.]

.....  
*Judge.*

Dated the.....day of....., 19....



## No. 142.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC.,  
IN THE HANDS OF A THIRD PARTY.

(Title.)

To the Bailiff of the Court and to.....

Whereas the following property.....has been attached in execution of a decree in Civil Suit No.....of.....19..., passed on the.....day of....., 19..., in favour of....., for \$.....: it is ordered that the property so attached, consisting of \$.....in money, and \$.....in currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said....., to....., and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof to satisfy the said decree, shall be paid over to the said....., and the remainder, if any, shall be paid to you, the said.....

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
Judge.

## No. 143.

## NOTICE TO ATTACHING CREDITOR.

(Title.)

To.....

Whereas.....has made application to this Court for the removal of attachment on....., placed at your instance in execution of the decree in Civil Suit No.....of 19..., this is to give you notice to appear before this Court on....., the.....day of....., 19..., either in person or by a solicitor of the Court duly instructed, to support your claim as attaching creditor.....

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
Judge.

## No. 144.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE  
FOR MONEY.

(Title.)

To the Bailiff of the Court.

These are to command you to sell by auction, after giving..... days' previous notice, by affixing the same in this Court-house, and after making due proclamation,\* the .....property attached under a

\* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by law to be specified.



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warrant from this Court dated the.....day of....., 19...., in execution of a decree in favour of....., in.....Suit No.....of 19...., or so much of the said property as shall realize the sum of dollars ....., being the.....of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the.....day of....., 19...., with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
*Judge.*

No. 145.

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD  
IN EXECUTION.

(Title.)

To.....

Whereas.....has been the purchaser at a sale by auction in execution of the decree in the above suit of.....now in your possession, you are hereby prohibited from delivering possession of the said .....to any person except the said.....

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
*Judge.*

No. 146.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN  
EXECUTION TO ANY OTHER THAN THE PURCHASER.

(Title.)

To.....and to.....

Whereas.....has become the purchaser at a public sale in execution of the decree in the above suit of.....certain.....debt .....due from you.....to you....., that is to say....., it is ordered that you.....be, and you are hereby, prohibited from receiving, and you.....from making payment of, the said debt to any person or persons except the said.....

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
*Judge.*



## No. 147.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD  
IN EXECUTION.

(Title.)

To..... and..... Manager of.....

Whereas..... has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above corporation, that is to say, of..... standing in the name of you....., it is ordered that you..... be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said....., the purchaser aforesaid, or from receiving any dividends thereon; and you..... Manager of the said corporation, from permitting any such transfer or making any such payment to any person except the said....., the purchaser aforesaid.

Given under my hand and the seal of the Court, this..... day of  
....., 19....

[L. S.]

.....  
Judge.

## No. 148.

## ORDER CONFIRMING SALE OF LAND, ETC.

(Title.)

Whereas the..... following land [or immovable property] was on the..... day of....., 19...., sold by the Bailiff of this Court in execution of the decree in this suit; and whereas..... days have elapsed and no application has been made [or objection allowed] in respect of the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

Given under my hand and the seal of the Court, this..... day of  
....., 19....

[L. S.]

.....  
Judge.

Schedule.

## No. 149.

## CERTIFICATE OF SALE OF LAND.

(Title.)

This is to certify that..... has been declared the purchaser at a sale by public auction on the..... day of....., 19...., of..... in execution of the decree in this suit, and that the said sale has been duly confirmed by the Court.

Given under my hand and the seal of the Court, this..... day of  
....., 19....

[L. S.]

.....  
Judge.



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No. 150.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A  
SALE IN EXECUTION.

(Title.)

To the Bailiff of the Court. .

Whereas.....has become the certified purchaser of.....at a sale in execution of the decree in Civil Suit No .....of 19...; and whereas such land is in the possession of....., you are hereby ordered to put the said....., the certified purchaser, as aforesaid, into possession of the said....., and if need be, to remove any person who may refuse to vacate the same.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

No. 151.

ORDER FOR COMMITTAL FOR RESISTING, ETC., EXECUTION OF  
DECREE FOR LAND.

(Title.)

To.....

Whereas it appears to the Court that.....has without just cause resisted [or obstructed] the execution of the decree of the Court passed against....., on the.....day of....., 19..., in Civil Suit No.....of 19..., whereby certain land or immovable property was adjudged to....., it is ordered that the said.....be detained in the civil prison for a period of.....days.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

No. 152.

JUDGMENT-DEBTOR SUMMONS.

(Title).

To....., the above-named Defendant.

You are hereby summoned to appear personally before this Court on the.....day of....., 19.., at the hour of.....in the forenoon then and there to be examined respecting your ability to satisfy the judgment recovered against you in the above suit on the.....day of .....for \$.....and costs, and you are not to depart thence until you have been examined and the Court has risen, unless you have obtained the leave of the Court.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.



## No. 153.

## NOTICE OF PAYMENT INTO COURT.

(Title.)

Take notice that the defendant has paid into Court \$....., and says that that sum is enough to satisfy the plaintiff's claim [or the plaintiff's claim for, etc.].

To Mr. X.Z.,  
the Plaintiff's Solicitor.  
Z.,  
Defendant's Solicitor.

## No. 154.

## COMMISSION TO EXAMINE ABSENT WITNESSES.

(Title.)

To.....

Whereas the evidence of.....is required by the.....in the above suit; and whereas.....; you are requested to take the examination on interrogatories [or *viva voce*] of such witnesses....., and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witnesses will be issued by this Court on your application].\*

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

## No. 155.

## ORDER FOR ISSUE OF REQUEST TO EXAMINE WITNESSES.

(Title.)

It is ordered that a letter of request do issue directed to the proper Tribunal for the examination of the following witnesses—that is to say:

E.F. of.....

G.H. of.....

and I.J. of.....

And it is ordered that the depositions taken pursuant thereto when received be filed with the Registrar, and be given in evidence on the trial of this suit, saving all just exceptions.

And it is further ordered that the trial of this suit be stayed until the said depositions have been filed.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

---

\* Not necessary where the commission goes to another Court.



## REQUEST TO EXAMINE WITNESSES.

[*Heading:—To the President and Judges of, etc., etc., or as the case may be.*]

Whereas a suit is now pending in the Supreme Court of the Federated Malay States in which A.B. is plaintiff and C.D. is defendant. And in the said suit the plaintiff claims

(*Concise statement of the Claim.*)

And whereas it has been represented to the said Court that it is necessary, for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters—that is to say:

E.F. of.....

G.H. of.....

and I.J. of.....

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.

Now I, ....., as the Chief Judicial Commissioner of the said Court, have the honour to request, and do hereby request, that, for the reasons aforesaid and for the assistance of the said Supreme Court, you as the President and Judges of the said ....., or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *vis à voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your Tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through His Britannic Majesty's Secretary of State for..... (or through the Chief Secretary to Government, Federated Malay States,) for transmission to the said Supreme Court of the Federated Malay States.

Given under my hand and the seal of the Court, this..... day of ....., 19...

.....  
Chief Judicial Commissioner,  
Federated Malay States.

[L. S.]



## No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE  
ACCOUNTS.  
(Title.)

To.....

Whereas it is deemed requisite, for the purpose of this suit, that a commission for.....should be issued; you are hereby appointed Commissioner for the purpose of.....[process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application].\*

A sum of \$....., being your fee in the above, is herewith forwarded.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

## No. 158.

## CERTIFICATE OF SERVICE OF FOREIGN PROCESS.

I, ....., Registrar (or Assistant Registrar) of the Supreme Court of the Federated Malay States, hereby certify that the documents annexed hereto are as follows:

- (1) The original letter of request for service of process received from the Court or Tribunal at.....in the..... of.....in the matter of.....*versus*.....; and
- (2) The process received with such letter of request; and
- (3) The evidence of service upon....., the person named in such letter of request, together with an affidavit, taken before me, relating thereto.

And I certify that such service so proved, and the proof thereof, are such as are required by the law and practice of the Supreme Court of the Federated Malay States regulating the service in the said States of legal process issued by the Courts thereof, and the proof of such service.

And I certify that the cost of effecting such service amounts to the sum of \$.....

Dated this.....day of....., 19....

[L. S.]

.....  
Registrar.

## No. 159.

ORDER TO EXAMINE WITNESS FOR PURPOSES OF A  
FOREIGN PROCEEDING.  
(Title.)

Upon reading the Letter of Request and the affidavit (if any) of....., filed the.....day of....., 19...., whereby it appears that proceedings are pending in the [description of Foreign Tribunal], in [name of foreign country], and that such Court is desirous of obtaining the testimony of [names of witnesses].

\* Not necessary where the commission goes to another Court.



It is ordered that the said witness.....do attend before the Registrar (*or Assistant Registrar*) of this Court at [*place appointed for examination*], on the.....day of....., 19..., at.....o'clock, or such other day and time as the said Registrar (*or Assistant Registrar*) may appoint, and do there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce [*description of documents (if any) required to be produced*].

And it is further ordered that the said Registrar (*or Assistant Registrar*) do take down in writing the evidence of the said witness, or witnesses, given on examination, cross-examination and re-examination, according to the provisions of Chapter XV of "The Civil Procedure Code, 19..." [*or as may be otherwise directed*]; and do cause each and every such witness to sign his or her depositions in his, the said Registrar's (*or Assistant Registrar's*) presence; and do sign the depositions taken in pursuance of this order [and the Letter of Request], and when so completed do transmit the same, together with this order, to the Chief Secretary to Government for transmission to the President of the said Tribunal desiring the evidence of such witness or witnesses.

Dated this.....day of....., 19....

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

#### No. 160.

#### CERTIFICATE OF EXAMINATION OF WITNESS FOR PURPOSES OF A FOREIGN PROCEEDING.

(Title.)

I, ....., Registrar (*or Assistant Registrar*) of the Supreme Court of the Federated Malay States, hereby certify that the documents annexed hereto are

- (1) the original order or the said Court, dated the.....day of....., 19..., made in the matter of.....pending in the.....at.....in the.....of....., directing the examination of certain witnesses to be taken before me; and
- (2) the examination and depositions taken by me pursuant to the said order, and duly signed and completed by me on the.....day of....., 19....

Dated this.....day of....., 19....

[L. S.]

.....  
Registrar.



## No. 161.

## SUMMONS IN SUMMARY SUIT FOR DEBT OR LIQUIDATED DEMAND.

(Title.)

To.....

[Here enter the defendant's name, description and address.]

Whereas [here enter the plaintiff's name, description and address] has instituted a suit in this Court against you under Chapter XXXIX of the Code of Civil Procedure for dollars....., principal and interest [or dollars....., balance of principal and interest] due to him as the payee [or endorsee] of a bill of exchange [or promissory note], of which a copy is hereto annexed [or as the case may be], you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to file a written statement of defence. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of dollars..... [here state the sum claimed] and the sum of dollars... ..for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

Given under my hand and the seal of the Court, this.....day of ....., 19....

.....  
Judge.

[L. S.]

## No. 162.

## WARRANT OF ARREST BEFORE JUDGMENT.

(Title.)

To the Bailiff of the Court.

Whereas....., the plaintiff in the above suit, has proved to the satisfaction of the Court that there is reasonable cause for believing that the defendant.....is about to....., these are to command you to take.....the said.....into custody, and to bring..... before the Court, in order that he may show cause why he should not furnish security to the amount of \$.....for.....personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against.....in the suit.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
Judge.



## No. 163.

## ORDER FOR COMMITTAL.

(Title.)

To.....

Whereas....., the plaintiff in this suit, has made application to the Court that security be taken for the appearance of the..... defendant.....to answer any judgment that may be passed against.....in the suit; and whereas the Court has called upon the defendant.....to furnish such security, or to offer a sufficient deposit in lieu of security, which.....has failed to do; it is ordered that the said defendant.....be detained in the civil prison until the decision of the suit, or, if judgment be given against....., until the execution of the decree.

Given under my hand and the seal of the Court, this.....day of ..... 19....

[L. S.]

Judge.

## No. 164.

## ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

(Title.)

To the Bailiff of the Court.

Whereas.....has proved to the satisfaction of the Court that the defendant in the above suit....., these are to command you to call upon the said defendant.....on or before the.....day of ....., either to furnish security for the sum of dollars.....to produce and place at the disposal of this Court when required.....or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against....., or to appear and show cause why.....should not furnish security; and you are further ordered to attach the said.....and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

Given under my hand and the seal of the Court, this.....day of ..... 19....

[L. S.]

Judge.

## No. 165.

## ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

(Title.)

To the Bailiff of the Court.

Whereas....., the plaintiff in this suit, has applied to the Court to call upon....., the defendant, to furnish security to fulfil any decree that may be passed against.....in the suit; and whereas the



Court has called upon the said.....to furnish such security, which .....has failed to do.....; these are to command you to attach ....., the property of the said....., and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
*Judge.*

-----  
No. 166.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

(Title.)

To....., Defendant.

It is ordered that you, the said....., be, and you are hereby, prohibited and restrained until the further order of this Court from receiving from.....the following property in the possession of the said....., that is to say,....., to which the defendant is entitled, subject to any claim of the said....., and the said.....is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person whomsoever.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
*Judge.*

-----  
No. 167.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

(Title.)

To....., Defendant.

It is ordered that you, the said....., be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging in any way the property specified in the schedule hereunto annexed, and that all persons be, and they are hereby, prohibited from taking any benefit from any transfer or charge of the said property.

Given under my hand and the seal of the Court, this.....day of ....., 19....

Schedule.

[L. S.]

.....  
*Judge.*



## No. 168.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS  
OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

(Title.)

To.....

It is ordered that the defendant.....be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from.....the [money now in.....hands belonging to the said defendant, or debts, as the case may be, describing them] and that the said.....be, and.....hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, etc.], or any part thereof, to any person whomsoever.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

## No. 169.

## ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES  
IN A CORPORATION.

(Title.)

To....., Defendant, and to  
....., Manager of.....

It is ordered that....., the defendant, be, and.....hereby prohibited and restrained, until the further order of the Court, from making any transfer of.....shares, being.....in the aforesaid corporation, or from receiving payment of any dividends thereon, and you....., the Manager of the said corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

.....  
Judge.

## No. 170.

## TEMPORARY INJUNCTIONS.

(Title.)

Upon motion made unto this Court by....., solicitor for the plaintiff A.B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this cause on the .....day of.....; or, the written statement of the said plaintiff filed on the.....day of.....] and upon hearing the evidence of .....and.....in support thereof [if after notice and defendant not appearing, add, and also the evidence of.....as to service of notice of this motion upon the defendant, C.D.]: This Court doth order that an injunction be awarded to restrain the defendant, C.D., his servants, workmen and agents from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned] being



No....., .....street, in....., and from selling the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this.....day of....., 19....

.....  
*Judge.*

[L. S.]

[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:]

.....to restrain the defendants.....and.....from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [or bill of exchange] in question, dated on or about the....., etc., mentioned in the plaintiff's plaint [or petition] and the evidence heard at this motion, until the hearing of this cause or until the further order of this Court.

[In copyright cases—]

.....to restrain the defendant, C.D., his servants, agents and workmen, from printing, publishing or vending a book, called....., or any part thereof, until the....., etc.

[Where part only of a book is to be restrained—]

.....to restrain the defendant, C.D., his servants, agents and workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified—namely, that part of the said book which is entitled..... and.....also that part which is entitled.....[or which is contained in page.....to page.....both inclusive] until the....., etc.

[In cases relating to exclusive privileges for inventions—]

.....to restrain the defendant, C.D., his agents, servants and workmen, from making or vending any perforated bricks (or, as the case may be) upon the principle of the inventions in the plaintiff's plaint [or petition, etc., or written statement, etc.] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the grants of exclusive privileges in the plaintiff's plaint [or, as the case may be] mentioned, and from counterfeiting or imitating the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[In cases of trade-marks—]

.....to restrain the defendant, C.D., his servants, agents and workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or, as the case may be] described as or purporting to be blacking manufactured by the plaintiff, A.B., in bottles having affixed thereto such labels as in the plaintiff's plaint [or petition, etc.,] mentioned, or any other labels so contrived or expressed as by colourable imitation or otherwise to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, A.B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A.B., until the....., etc.



[To restrain a partner from in any way interfering in the business.—]

.....to restrain the defendant, C.D., his agents and servants, from entering into any contract and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership firm of B. and D., and from contracting any debt, from buying and selling any goods, from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership firm of B. and D., or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sum of money or for the performance of any contract, promise, or undertaking until the....., etc.

No. 171.

NOTICE OF APPLICATION FOR INJUNCTION.

(Title.)

Take notice that I, A.B., intend to apply at the sitting of the Court at.....aforesaid, on the.....day of....., for an injunction to restrain C.D. from further prosecuting a suit which he has commenced against me in..... to recover damages for breach of the contract for the specific performance of which this suit was commenced [or to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding up of which this suit was commenced; or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce; or, as the case may be].

Dated this.....day of....., 19....

To C.D.

A.B.

[N.B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.]

No. 172.

APPOINTMENT OF A RECEIVER.

(Title.)

To.....

Whereas.....has been attached in execution of a decree passed in the above suit on the.....day of....., 19..., in favour of.....: you are hereby (subject to your giving security to the satisfaction of the Registrar) appointed Receiver of the said property under section 505 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on..... You will be entitled to remuneration at the rate of.....per cent. upon your receipts under the authority of this appointment.

Given under my hand and the seal of the Court, this.....day of .....19....

[L. S.]

.....  
Judge.



## No. 173.

## BOND TO BE GIVEN BY RECEIVER.

(Title.)

Know all men by these presents, that we, I.J., of, etc., and K.L., of, etc., and M.N., of, etc., are jointly and severally bound to G.H., Registrar of the Court of....., in \$....., to be paid to the said G.H., or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this.....day of....., 19....

Whereas a plaint has been filed in this Court by A.B. against C.D. for the purpose of [here insert the object of suit].

And whereas the said I.J. has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of O.P., the testator in the said plaint named :

Now the condition of this obligation is such, that if the above-bounden I.J. shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property and in respect of the movable property of the said O.P. [or as the case may be] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I.J.

K.L.

M.N.

Signed and delivered by the above-bounden in the presence of .....

[NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.]

## No. 174.

## AFFIDAVIT FOR DISTRESS.

In the.....Court of.....

Distress No.....of 19....

A.B. of.....Plaintiff,  
against

C.D. of.....Defendant.

I, A.B., residing at.....in the State of.....make oath and say that C.D., who resides at.....in the State of....., is justly indebted to.....in the sum of dollars.....for arrears of rent of the house and premises No.....situated at..... in the State of .....due for.....months from.....to.....at the rate of dollars .....per mensem.

Sworn before me, the.....day of....., 19....

[L. S.]

Magistrate or Registrar.



## No. 175.

## POWER OF ATTORNEY TO DISTRAIN.

I (or we), A.B., do hereby authorize X.Y. to be my (our) agent to act for me (us) in distraining, under Chapter XLIV of "The Civil Procedure Code, 191 ," for (all) (the) arrears of rent now due to me (us) (or to be hereafter due) on property situated in (*here describe property*), as to which I am (we are) entitled to distrain as (*Owner, Lessee, Trustee, Guardian, etc.*), alone (or together with E.F.), etc.

Dated at.....the.....day of....., 19....

(Signed) A.B.

Witness.....

## No. 176.

## WARRANT OF DISTRESS.

(Title as in Form No. 174.)

To the Bailiff of the Court.

I do hereby direct you to distrain the movable property found in or upon the premises No....., .....street, ....., and in the apparent possession of the defendant C.D., for the sum of dollars....., being the amount of.....months' rent due to A.B. for the same on the.....day of..... last, according to the provisions of Chapter XLIV of "The Civil Procedure Code, 191 ."

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
Judge.

## No. 177.

## INVENTORY AND NOTICE.

(Title as in Form No. 174.)

To C.D.

[*State particulars of goods seized.*]

Take notice that I have this day seized the movable property found in or upon the premises No....., .....street, ....., and in the apparent possession of the defendant C.D., contained in the above inventory, for the sum of dollars.....being the amount of..... months' rent due to A.B. on.....last and that I value the said movable property approximately at the sum of dollars .....and that unless you pay the amount of the said rent, together with the costs of this distress, within five days from the date hereof, or obtain an order from the Court to the contrary, the same will be sold on the..... day of....., 19...., at.....pursuant to the provisions of Chapter XLIV of "The Civil Procedure Code, 191 ."

(Signed) E.F.,

Bailiff.



## No. 178.

## AFFIDAVIT ON APPLICATION TO FOLLOW GOODS.

(Title as in Form No. 174.)

I, A.B., of....., make oath and say as follows:

1. I am landlord of house No....., .....street, .....

2. On the.....day of....., 19..., I obtained a warrant of distress against the movable property found in or upon the premises No....., .....street, ....., and in the apparent possession of the defendant C.D. for arrears of.....months' rent due to me from..... 19... to.....19..., at the rate of \$.....per mensem, amounting to \$.....

3. On the.....day of....., 19..., I saw.....remove all the household furniture from the said house No....., .....street, ....., to house No....., .....street.

On the above grounds I pray for authority to follow the property removed as aforesaid to house No....., .....street.

Sworn before me, the.....day of....., 19....

.....  
[L. S.]      *Magistrate or Registrar.*

## No. 179.

## AUTHORITY TO FOLLOW GOODS.

(Title as in Form No. 174.)

Upon reading the affidavit of.....sworn to and filed herein this day and the return of the Bailiff to the warrant of distress issued herein this day, it is ordered that the Bailiff of this Court do follow, take and seize all the goods liable to seizure under the said warrant of distress which were alleged in and by the said affidavit to have been removed by the said defendant from house No....., .....street to house No....., .....street.

Given under my hand and the seal of the Court, this.....day of ....., 19...

.....  
[L. S.]      *Judge.*

## No. 180.

## AFFIDAVIT ON APPLICATION FOR AUTHORITY TO MAKE FORCIBLE ENTRY IN EXECUTION OF WARRANT OF DISTRESS.

(Title as in Form No. 174.)

I, A.B., of....., make oath and say as follows:

1. On the.....day of....., 19..., I went to house No....., .....street, ....., for the purpose of executing a warrant of distress issued against the movable property found in or about the said house and in the apparent possession of the said C.D.



2. In my opinion such house is held on a rent of a full three-fourths of its yearly value and neither its value by the year nor the rent payable in respect of its tenancy by the year exceeds \$300.

3. I found the premises deserted and unoccupied and the door closed with a padlock from the outside. I made enquiries from the neighbours and was informed that the tenant had been absent for more than.....

As there are no means of executing the said warrant without breaking open the doors or windows of the said house, I apply for the order of this Court to break open the said doors or windows.

Sworn before me, the.....day of....., 19....

[L. S.]

.....  
*Magistrate or Registrar.*

No. 181.

AUTHORITY TO MAKE FORCIBLE ENTRY IN EXECUTION OF WARRANT  
OF DISTRESS.

(Title as in Form No. 174.)

To the Bailiff of the Court.

Whereas the above-named A.B. has on an affidavit dated the .....day of....., 19...., taken out a warrant of distress whereby the Bailiff was directed to distrain the movable property found in or upon the premises No....., .....street, ..... and in the apparent possession of the defendant C.D. for the sum of \$..... And whereas this Court is satisfied that there are no reasonable means of executing the said warrant without breaking open the outer doors or windows of the said No....., .....street and that this order is warranted by the provisions of section 533 of "The Civil Procedure Code, 191 .." This is therefore to authorize you to break open or cause to be broken open the doors or windows of the said house No....., .....street, so far as may be necessary to enable you to execute the said warrant, taking all due precautions for the protection of the property in the premises and informing the owner or persons in the premises before acting on this order that you have such order, if such owner or persons is or are to be found.

Given under my hand and the seal of the Court, this.....day of....., 19....

[L. S.]

.....  
*Judge.*

No. 182.

MEMORANDUM OF APPEAL.

(Name, etc., as in Register.) Plaintiff—Appellant.

(Name, etc., as in Register.) Defendant—Respondent.

[Name of Appellant] [plaintiff or defendant] above-named appeals to the Court of a Judicial Commissioner at.....against the decree of.....in the above suit, dated the.....day of....., for the following reasons—namely [here state the grounds of objection].







## No. 184.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING  
OF THE APPEAL.

In the Court of a Judicial Commissioner at.....

....., Appellant, v. ...., Respondent.

Appeal from the.....of the Court of.....dated the.....day  
of....., 19....

To....., Respondent.

Take notice that an appeal from the decree of.....in this case  
has been presented by.....and registered in this Court, and that  
the.....day of....., 19...., has been fixed by this Court for the  
hearing of this appeal.

If no appearance is made on your behalf by yourself, your solicitor  
or by someone by law authorized to act for you in this appeal, it will  
be heard and decided *ex parte* in your absence.

Given under my hand and the seal of the Court, this.....day of  
....., 19....

[L. S.]

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should be given  
of the fact on this notice.]

## No. 185.

## DECREE ON APPEAL.

In the Court of a Judicial Commissioner at.....

....., Appellant, v. ...., Respondent.

Appeal from the.....of the Court of.....dated the.....day  
of....., 19....

....., Plaintiff.

....., Defendant.

Plaintiff [or defendant] above-named appeals to the Court of a  
Judicial Commissioner at.....against the decree of.....in the  
above suit, dated the.....day of....., 19...., for the following  
reasons—namely,

[Here state the reasons.]

This appeal coming on for hearing on the.....day of.....,  
19...., before....., in the presence of.....for the Appellant and of  
.....for the Respondent, it is ordered—

[Here state the relief granted.]

The costs of this appeal, amounting to \$....., are to be paid by  
..... The costs of the original suit are to be paid by.....

Given under my hand and the seal of the Court, this.....day  
of....., 19....

[L. S.]

Judge.



## No. 186.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

(Title.)

To.....

Take notice that..... has applied to this Court for a review of its judgment passed on the.....day of....., 19..., in the above case. The.....day of....., 19..., is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

Given under my hand and the seal of the Court, this.....day of ....., 19....

[L. S.]

.....  
*Judge.*

## No. 187.

NOTICE OF CHANGE OF SOLICITOR.

(Title.)

To the Registrar of the Court.

Take notice that I, A.B. [or C.D.], have hitherto employed as my solicitor G.H., of....., in the above-mentioned cause, but that I have ceased to employ him, and that my present solicitor is J.K., of.....

A.B. [or C.D.]

## No. 188.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE DECREE OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [place of office] from [ten] till [four], except on [here insert the day on which the office will be closed], when the office will be closed [at one].

## OBJECTS AND REASONS.

This Bill provides for repealing and re-enacting as a Federal measure the Civil Procedure Codes passed in the several States in 1902 and the subsequent amending Enactments, with the variations incidental to such change of scope, with certain alterations of arrangement and phrasing, and with some additions.

The Codes of 1902 were adapted from the Indian Act No. XIV of 1882, since superseded by Act No. V of 1908 and the Orders thereunder; the alterations of arrangement and phrasing in this Bill are largely adapted from the 1908 Act and Orders.



Among the most noticeable of the additions are the following :

- Clauses 63 to 66, relating to service of summons outside the Federated Malay States ;
- „ 341, 344 (iii) and 350, for the aid of an insolvent's creditors outside the Federated Malay States ;
- „ 391 and 392, aid to foreign tribunals ;
- „ 414 to 425, enabling firms to sue and be sued in the firm name ;
- „ 471 to 480, providing a summary procedure in claims for debt and liquidated demands ;
- „ 509 to 533, relating to termination of tenancies and distress for rent ;
- „ 559, enabling a new trial to be ordered in any appeal from a decree of a Magistrate's Court.

The Bill also provides for a discretion as to framing and recording issues (Chapter XIV), makes new provision as to the persons before whom affidavits for local use may be sworn (clause 196), provides for the certifying of the grounds of a Magistrate's judgment (clauses 201 and 537), extends to certain Protectorates the provisions relating to execution of commissions and service of summons (clauses 379 and 598), provides for enforcement of the duties of a receiver (clause 507), and adds thirteen new forms to the third schedule.

The terms of the Bill assume the passing of Federal legislation in respect of the constitution of the Courts.

KUALA LUMPUR,  
10th September, 1917.

F. BELFIELD,  
Legal Adviser, F.M.S.