

GOVERNMENT NOTIFICATION.—No. 158.

His Excellency the Governor has given his assent, in the name and on behalf of the KING, to the following Ordinances passed by the Legislative Council:—

- Ordinance No. 4 of 1901.—An Ordinance to amend and declare in certain respects the Law to be administered in the Supreme Court.
- Ordinance No. 5 of 1901.—An Ordinance to establish a Code of Procedure for the Regulation of the Process, Practice, and Mode of Pleading in the Civil Jurisdiction of the Supreme Court of the Colony.
- Ordinance No. 6 of 1901.—An Ordinance to repeal various Statutes relating to Civil Procedure or Matters connected therewith.
- Ordinance No. 7 of 1901.—An Ordinance to consolidate and amend the Laws relating to Trustees.
- Ordinance No. 8 of 1901.—An Ordinance to consolidate and amend the Laws relating to Rating.
- Ordinance No. 9 of 1901.—An Ordinance to amend the Law of Libel and Slander.

By Command,

J. H. STEWART LOCKHART,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 14th March, 1901.

NO. 4 OF 1901.

An Ordinance to amend and declare in certain respects the Law to be administered in the Supreme Court.



HENRY A. BLAKE,
Governor.

[12th March, 1901.]

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

1. This Ordinance may be cited as the Law Amendment Ordinance, 1901. Short title.

2. In this Ordinance, unless the context otherwise requires,— Interpretation of terms.

“The Court” means the Supreme Court:

“Cause” means any action, suit, or other original proceeding between a plaintiff and a defendant:

“Action” means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by any statute for the time being in force:

“Matter” includes every proceeding in the Court not in a cause.

Concurrent Administration of Law and Equity.

3. In every cause or matter commenced in the Court law and equity shall be administered by the Court according to the rules following:— Rules for the concurrent administration by the Court of law and equity.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any defendant or respondent in such 36 & 37 Vict. c. 66 s. 24.

cause or matter, or to any relief founded upon a legal right, which formerly could only have been given by the Court in its equitable jurisdiction, the Court shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court in its equitable jurisdiction in a suit or proceeding for the same or the like purpose properly instituted before the commencement of the Hongkong Code of Civil Procedure;

- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the Court shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted therein for the same or the like purpose before the commencement of the Hongkong Code of Civil Procedure;
- (3.) The Court shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant has properly claimed by his pleading and as the Court might have granted in any action brought by the same defendant against the same plaintiff or petitioner, and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim pursuant to the Code of Civil Procedure, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant;
- (4.) The Court shall recognize and take notice of all equitable estates, rights, and titles, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court in its equitable jurisdiction would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of the Hongkong Code of Civil Procedure;
- (5.) No cause or proceeding at any time pending in the Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Ordinance had not been passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided that nothing in this Ordinance shall disable the Court from directing a stay of proceedings in any cause or matter pending before it, if it thinks fit; and any person, whether a party or not to any such cause or matter, who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the Court, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as may be just;

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Ordinance, the Court shall recognize and give effect to all legal claims and demands, and all estates, rights, titles, duties, obligations, and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as the same would have been recognized and given effect to by the Court if this Ordinance had not been passed; and

(7.) The Court, in the exercise of the jurisdiction vested in it by this Ordinance, in every cause or matter pending before it shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to it may seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Amendment and Declaration of Law.

4. In the administration by the Court of the assets of any person who may die after the commencement of this Ordinance and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the judgment or order for the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Ordinance.

Administration by the Court of estate of deceased insolvent person.
36 & 37 Vict. c. 66 s. 25 (1.)

5. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate.

Equitable waste.
Ib. s. 25 (3.)

6. There shall not, after the commencement of this Ordinance, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Merger.
Ib. s. 25 (4.)

7. A mortgagor entitled for the time being to the possession or receipt of the rents or profits of any immovable property as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof has been given by the mortgagee may sue for such possession, or for the recovery of such rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Action for possession of immovable property by mortgagor.
Ib. s. 25 (6.)

8. Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Ordinance had not been passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided that if the debtor, trustee, or other person liable in respect of such debt or chose in action has had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he thinks fit, to

Assignment of debt or chose in action.
Ib. s. 25 (6.)

call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into the Court under and in conformity with the provisions of any Ordinance for the time being in force relating to trustees.

Stipulations not of the essence of contracts. *Ib.* s. 25 (7.)

9. Stipulations in contracts, as to time or otherwise, which would not before the commencement of the Hongkong Code of Civil Procedure have been deemed to be or to have become of the essence of such contracts in the Court in its equitable jurisdiction shall receive in the Court the same construction and effect as they would formerly have received in equity.

Mandamus, injunction, and receiver. *Ib.* s. 25 (8.)

10.—(1.) A mandamus or an injunction may be granted, or a receiver appointed, by an interlocutory order of the Court in all cases in which it may appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or on such terms and conditions as the Court may think just.

(2.) If an injunction is asked, either before, or at, or after the trial or hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by collision between ships. 36 & 37 *Vict.* c. 66 s. 25 (9.)

11. In any cause or proceeding for damages arising out of a collision between two ships, if both ships are found to have been in fault, the rules in force in the Court in its Admiralty jurisdiction, so far as they are at variance with the rules in force in the Court in its common law jurisdiction, shall prevail.

Custody and education of infants. *Ib.* s. 25 (10.)

12. In questions relating to the custody and education of infants the rules of equity shall prevail.

General rule as to conflict between equity and law. *Ib.* s. 25 (11.)

13. Generally, in all matters not particularly mentioned in sections 4 to 12, both inclusive, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

Miscellaneous Provisions.

Provision for sitting with assessors. *Ib.* s. 56.

14.—(1.) The Court may, in any civil cause or matter in which it may think it expedient to do so, call in the aid of one or more assessors specially qualified and try or hear such cause or matter wholly or partially with the assistance of such assessor or assessors.

(2.) The remuneration, if any, to be paid to such assessor or assessors shall be determined by the Court.

Assignment to self and others. *Ord. No. 7 of 1873* s. 2.

15. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or other persons or company or corporation, by the like means as he might assign the same to another.

Commencement of the Ordinance.

16. This Ordinance shall come into force on the 1st day of July, 1901.

Passed the Legislative Council of Hongkong, this 14th day of February, 1901.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 12th day of March, 1901.

J. H. STEWART LOCKHART,
Colonial Secretary.

No. 5 of 1901.

An Ordinance to establish a Code of Procedure for the Regulation of the Process, Practice, and Mode of Pleading in the Civil Jurisdiction of the Supreme Court of the Colony.

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HENRY A. BLAKE,
Governor.

[12th March, 1901.]

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

Preliminary Provisions.

1. This Ordinance may be cited as the Code of Civil Procedure. Short title.

2. In this Ordinance, unless the context otherwise requires,— Interpreta-
tion of terms.
H. K. Code,
s. 2.

“The Court” means the Supreme Court and includes the Chief Justice and the Puisne Judge of the Supreme Court, sitting separately, in Court or in Chambers:

“The Full Court” means the Chief Justice and the Puisne Judge of the Supreme Court, sitting together, in Court or in Chambers:

“The Registry” means the Registry of the Court:

“The Registrar” means the Registrar of the Court and includes a Deputy Registrar:

“The Bailiff” means a Bailiff of the Court and includes any person lawfully authorized to execute the process of the Court:

“This Code” means the Code of Civil Procedure established by this Ordinance:

“Within the Jurisdiction” means within the Colony:

“Cause” means any action, suit, or other original proceeding between a plaintiff and a defendant: Jud. Act,
1873, s. 100.

“Action” means a civil proceeding commenced by writ of summons or in such other manner as is prescribed by this Code: Ib.

“Cause of Action” in actions founded on contract does not necessarily mean the whole cause of action, but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere: H. K. Code,
s. 2.

“Matter” includes every proceeding in the Court not in a cause: Jud. Act,
1873 s. 100.

- O. 71 r. 1 A. "Originating Summons" means every summons other than a summons in a pending cause or matter:
- Jud. Act, 1873, s. 100.* "Party" includes every person served with notice of or attending any proceeding, although not named on the record:
- Ib.* "Judgment" includes decree:
- "Judgment Creditor" means any person in whose favour a judgment or order capable of execution has been given or made, and includes any person to whom such judgment or order has been transferred:
- Indian Code, s. 2.* "Judgment Debtor" means any person against whom a judgment or order has been given or made:
- O. 71 r. 1. "Receiver" includes a consignee or manager appointed by or under an order of the Court.
- Savings, H. K. Code, s. 3.* 3. Subject to the provisions of any statute, rule, or order relating thereto, nothing in this Code shall—
- (1.) affect the rights, privileges, or remedies of the Crown further or otherwise than is herein expressly enacted in that behalf; or
 - (2.) affect the existing jurisdiction or powers of the Court further or otherwise than is herein expressly enacted in that behalf; or
 - (3.) affect the practice or procedure of the Court prescribed by any statute for the time being in force relating to—
 - (a.) causes or matters testamentary; or
 - (b.) causes or matters in bankruptcy; or
 - (c.) causes or matters in its admiralty jurisdiction; or
 - (d.) the incorporation, regulation, and winding up of trading companies and other associations.
- Enactment, subject to the Code of the English Rules of Court. New.* 4. In all cases with respect to which no provision is made by this Code the Rules of Practice for the time being in force in the Supreme Court in England shall be deemed to be in force in the Court, subject to their applicability and with such modifications as the circumstances may require.
- Arrangement of the Code. New.* 5. This Code is divided into Parts and Chapters, as follows:—

PART I.—ACTIONS IN GENERAL.

Chapter 1.—Institution of Action.

Chapter 2.—Parties.

Chapter 3.—Joinder of Causes of Action.

Chapter 4.—Pleadings.

Chapter 5.—Amendment.

Chapter 6.—Discovery, Inspection, and Admissions.

Chapter 7.—Issues, Inquiries, and Accounts.

Chapter 8.—Special Case.

Chapter 9.—Issues of Fact without Pleadings.

Chapter 10.—Interlocutory Proceedings.

Chapter 11.—Preliminaries of Trial.

Chapter 12.—Trial.

Chapter 13.—Evidence.

Chapter 14.—Judgment.

Chapter 15.—Costs.

Chapter 16.—Execution.

PART II.—SPECIAL ACTIONS AND PROCEEDINGS.

Chapter 17.—Foreign Attachment.

Chapter 18.—Action against the Government.

Chapter 19.—Action by or against Firm, etc.

Chapter 20.—Action by or against Pauper.

Chapter 21.—Action for Recovery of Immovable Property.

Chapter 22.—Mandamus.

Chapter 23.—Interpleader.

Chapter 24.—Reference to Arbitration.

PART III.—PROVISIONAL REMEDIES.

Chapter 25.—Arrest and Attachment before Judgment.

Chapter 26.—Temporary Injunction.

Chapter 27.—Receiver.

PART IV.—APPEALS.

Chapter 28.—Appeal to the Full Court.

Chapter 29.—Appeal to the King-in-Council.

PART V.—MISCELLANEOUS MATTERS.

Chapter 30.—Business in Chambers.

Chapter 31.—Various Provisions.

6. All civil proceedings in the Court heretofore called suits shall hereafter be called actions, and shall be instituted and carried on in the manner hereinafter prescribed.

Institution and carrying on of actions.
H. K. Code,
s. 5.

PART I.

ACTIONS IN GENERAL.

CHAPTER I.

INSTITUTION OF ACTION.

Writ of Summons.

7. Subject to the provisions hereinafter contained with respect to the institution of special actions and proceedings, every action in the Court shall be commenced by a writ of summons.

Commencement of action with writ of summons.

8.—(1.) The writ shall be prepared by the plaintiff or his solicitor. It shall be written or printed, or partly written and partly printed, and shall specify the name, description, and place of abode of the plaintiff and of the defendant, so far as they can be ascertained, the subject-matter of the claim, and the relief or remedy required in the action.

Ib. s. 9 (1.)
Schedule:
Form No. 1.
Preparation and contents of writ.
Ib. s. 9 (2.)
O. 5 r. 10.

(2.) If the plaintiff sues, or the defendant is sued, in a representative capacity, the writ shall specify such capacity.

O. 3 r. 4.

9. The writ shall bear date on the day on which it is issued, and shall be tested in the name of the Chief Justice.

Date and teste of writ.
H. K. Code,
s. 9 (2.)

10.—(1.) The plaintiff or his solicitor shall, on presenting the writ for sealing, leave with the Registrar a copy of the writ and all the indorsements thereon.

Leaving of copy of writ.
O. 5 r. 12.

(2.) Such copy shall be signed by or in the name of the plaintiff's solicitor, or by the plaintiff if he sues in person.

Filing and marking of copy of writ. *O. 5 r. 13.* 11. The Registrar shall file the copy of the writ, and an entry of the filing thereof shall be made in the Cause-book, and the action shall be distinguished by the date of the year and a number.

Sealing and issue of writ. *Ib. r. 11.* 12. The writ shall be signed by the Registrar and sealed with the seal of the Court, and shall thereupon be deemed to be issued.

Writ for service out of jurisdiction. *O. 2 r. 4.* 13. No writ for service out of the jurisdiction shall be issued without the leave of the Court.

Alteration in writ. *H. K. Code, s. 9 (3.)* 14. Any alteration in the writ before service, without the leave of the Registrar or of the Court, shall render the writ void.

Duration and renewal of writ. *Ib. s. 9 (4.) O. 8 r. 1.* 15.—(1) If service of the writ has not been effected within twelve months from the date thereof, the writ shall become void: Provided that the Court may, before the expiration of the then current period, in its discretion, from time to time renew the operation of the writ for a further period not exceeding six months at one time.

(2) A writ so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ.

Evidence of renewal of writ. *Ib. r. 2.* 16. The production of a writ of summons purporting to be sealed with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence for all purposes of its having been so renewed and of the commencement of the action as on the date of the original issue of the writ.

Case of lost writ. *Ib. r. 3.* 17. Where a writ of summons of which production is necessary has been lost, the Court, on being satisfied of the loss and of the correctness of a copy of the writ, may order that such copy shall be sealed and served and have effect in lieu of the original writ.

Saving as to proceedings on petition. *H. K. Code, s. 9 (5.)* 18. Nothing hereinbefore contained with respect to a writ of summons shall be deemed to apply to proceedings which may now be heard on petition without preliminary service on any party, but all petitions shall be subject to the rules hereinafter contained with respect to pleading and to the form and contents of a statement of claim, so far as they are applicable to the subject-matter thereof.

Specially Indorsed Writ.

Right to indorse writ specially in action for debt or liquidated demand. *O. 3 r. 6.* 19. In any action where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

- (1) on a contract, express or implied, (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or
- (2) on a bond or contract under seal for payment of a liquidated amount of money; or
- (3) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
- (4) on a guarantee, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or
- (5) on a trust,

Schedule: Form No. 2. the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim or of the relief or remedy to which he claims to be entitled.

Right to indorse writ specially in action for immovable property. 20. In any action for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against any

person claiming under such tenant, the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim or of the relief or remedy to which he claims to be entitled.

property.
O. 3 r. 6.
Schedule :
Form No. 2.

21.—(1.) Where the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt or in respect of such demand, and for any interest thereon payable by law or under any contract, express or implied, and for costs respectively, and shall further state that, on payment thereof within four days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed.

Nature of
special in-
dorsement.
H. K. Code,
s. 13 (1.)
O. 3 r. 7.

(2.) The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

22. In default of appearance to a specially indorsed writ, the plaintiff, on satisfying the Court that the writ was duly served, shall be entitled to judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, or, if no rate is specified, at the rate for the time being fixed by the Court, to the date of the judgment, and costs, or that the person whose title is asserted in the writ shall recover possession of the immovable property, and costs: Provided that the Court may, nevertheless, on such terms as may seem just, give leave to the defendant to appear and defend the action on an application supported by satisfactory affidavits accounting for his non-appearance and disclosing a defence on the merits.

Procedure
on default of
appearance
to specially
indorsed
writ.
H. K. Code,
s. 13 (1.)
O. 13 rr. 3, 8.

23.—(1.) Where the defendant appears to a specially indorsed writ, the plaintiff may, on filing an affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed, if any, and stating that in his belief there is no defence to the action, take out a summons calling upon the defendant to show cause why the plaintiff should not proceed to judgment and execution.

Procedure
where defend-
ant appears
to specially
indorsed
writ.
H. K. Code,
s. 13 (2.)

(2.) On the hearing of such summons, the Court shall make such order, and on such terms and conditions, if any, as may be just and proper.

(3.) If it appears to the Court that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff may be allowed to proceed to judgment and execution against the latter, without prejudice to his right to proceed with his action against the former.

O. 14 r. 5.

24.—(1.) In like manner, in cases of ordinary account, as in the case of a partnership, or executorship, or ordinary trust account, where nothing more is required in the first instance than an account, the writ may be specially indorsed with a claim for such account, and in default of appearance, or after appearance, unless the defendant satisfies the Court that there is really some preliminary question to be tried, an order for the proper account, with all necessary inquiries and directions now usual in similar cases, shall be forthwith made.

Right to in-
dorse writ
specially in
case of ordin-
ary account,
and proced-
ure thereon.
H. K. Code,
s. 13 (3.)
O. 3 r. 8.
O. 15.

(2.) The application for such order shall be made by summons and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

Concurrent Writs.

25.—(1.) The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear *teste* of the same day as the original writ, and to be marked by the Registrar with the word "concurrent" and the date of issuing the concurrent writ: Provided that such concurrent writ or writs shall only be in force for the period during which the original writ in the action may be in force.

Issue and
marking of
concurrent
writs.
O. 6 r. 1.

O. 6 r. 2. (2.) A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction; and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Originating Summons.

Issue of originating summons. O. 54 r. 4. B. Schedule: Forms Nos. 3, 4, and 5. 26. An originating summons shall be prepared by the applicant or his solicitor, and shall be signed by the Registrar and sealed with the seal of the Court, and shall thereupon be deemed to be issued.

Filing of copy of originating summons. *Ib.* 27. The applicant or his solicitor shall leave with the Registrar a copy of the summons signed by the applicant or by or in the name of his solicitor, and such copy shall be filed by the Registrar.

Appearance to originating summons. *Ib.* r. 4 C. 28.—(1.) Every party served with an originating summons shall, before he is heard, enter an appearance in the Registry.

(2.) A party so served may appear at any time before the hearing of the summons.

(3.) If he appears at any time after the time limited by the summons for appearance, he shall not, unless the Court otherwise orders, be entitled to any further time for any purpose than if he had appeared according to the summons.

Attendance under originating summons. *Ib.* r. 4 D. Schedule: Form No. 6. 29.—(1.) The day and hour for attendance under an originating summons shall, after appearance, be fixed by notice, sealed with the seal of the Court.

(2.) The notice shall be served on the defendant or respondent by delivering a copy thereof at the address for service named in the memorandum of appearance of such defendant or respondent not less than four days before the return day.

Provisions relating to Solicitors.

Disclosure by solicitor whose name is indorsed on writ. O. 7 r. 1. 30.—(1.) Every solicitor whose name is indorsed on a writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity.

(2.) If such solicitor declares that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court.

Change of solicitors. *Ib.* r. 3. 31. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice in writing of such change being filed in the Registry; but until such notice is filed and a copy thereof served on the opposite party, the former solicitor shall be considered the solicitor of the party until the conclusion of the cause or matter.

Service of Process in General.

Prohibition of service on Sunday, etc. *H. K. Code, s. 8 (1.)* 32. No service in an action or other proceeding shall be made on Sunday, Christmas Day, or Good Friday.

General rule as to mode of service. *Ib.* s. 8 (2.) 33. Unless in any case the Court thinks it proper otherwise to direct, service shall be personal, that is, the document to be served shall be delivered to the person to be served: Provided always that where the duly authorized solicitor of the person to be served undertakes to accept service on behalf of his client, service on such solicitor shall be equivalent to personal service on the client, and all further service in the action or proceeding may be made by delivering the document to be served to such solicitor, or by leaving the same at his place of business.

Special modes of service, by order of the Court. *Ib.* s. 8 (3.) 34.—(1.) Where it is made to appear to the Court that for any reason prompt personal service of any document of which service is required cannot conveniently be effected, the Court may order that service be effected—

(a.) by delivery of the document to be served, together with the order for service, to some adult inmate at the usual or last known place of abode or business within the Colony of the person to be served; or

(b.) by delivery thereof to some agent within the Colony of the person to be served, or to some other person within the Colony through whom it appears to the Court that there is a reasonable probability that the document and order served will come to the knowledge of the person to be served; or

(c.) by advertisement thereof in one or more newspapers published in the Colony; or

(d.) by notice thereof put up at the Court House, or at some other place of public resort, or at the usual or last known place of abode or business within the Colony of the person to be served; or

(e.) in any two or more of these modes.

(2.) Every application for an order for such service *O. 10.* shall be supported by an affidavit setting forth the grounds on which the application is made.

Service of Process in Particular Cases.

35. When the action or other proceeding is against a person in the service of the Government, the Court may transmit a copy of the document to be served to the head of the department in which the defendant is employed, for the purpose of being served on him, if it appears to the Court that the document may most conveniently be so served. Service on defendant in public service. *H. K. Code,* s. 8 (4.)

36. When the action or other proceeding is against a British corporation, or a company authorized to sue and be sued in the name of an officer or trustee, the document may be served by giving it to any director, secretary, or other principal officer, or by leaving it at the office, of the corporation or company. Service on British corporation, etc. *Ib. s. 8 (5.)*

37. When the action or other proceeding is against a foreign corporation or company having an office and carrying on business in the Colony, the document may be served by giving it to the principal officer, or by leaving it at the office, of the corporation or company within the Colony. Service on foreign corporation, etc. *Ib. s. 8 (6.)*

38. When the action or other proceeding is against a husband and his wife, the document shall be served on both, unless the Court otherwise orders. Service on husband and wife. *O. 9 r. 3.*

39. When the action or other proceeding is against an infant, the document may be served on his father or guardian, or, if there is no father or guardian, then on the person with whom the infant resides or under whose care he is: Provided that the Court may order that service made or to be made on the infant shall be deemed good service. Service on infant. *Ib. r. 4.*

40. When the action or other proceeding is against a lunatic or person of unsound mind not so found by inquisition, the document may, unless the Court otherwise orders, be served on the committee of the lunatic or on the person with whom the person of unsound mind resides or under whose care he is. Service on lunatic, etc. *Ib. r. 5.*

41. When the action or other proceeding is against a person residing out of the jurisdiction, but carrying on business in the Colony in his own name or under the name of a firm through a duly authorized agent, the document may be served by giving it to such agent, and such service shall be equivalent to personal service on the defendant. Service on defendant residing out of jurisdiction, etc. *H. K. Code,* s. 8 (7.)

42.—(1.) Service out of the jurisdiction may be allowed by the Court whenever—

(a.) the whole subject-matter of the action is immovable property situate within the jurisdiction (with or without rents or profits); or

(b.) any act, deed, will, contract, obligation, or liability affecting immovable property situate within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the action; or

(c.) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or

(d.) the action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a

Service out of jurisdiction. *O. 11 r. 1.* Schedule: Forms Nos. 7 and 8.

trustee, which ought to be executed according to the law of the Colony; or

(e.) the action is on a contract and the cause of action has arisen within the jurisdiction; or

(f.) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction 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 jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

O. 11 r. 4. (2.) Every application for leave to serve a writ of summons on a defendant out of the jurisdiction shall be supported by 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, 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 that the case is a proper one for service out of the jurisdiction under this section.

Ib. r. 5. (3.) Any order giving leave to effect such service shall limit a time after the service within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served.

Variation of Order for Service, etc.

Power to vary order for service. H. K. Code, s. 8 (10.) 43. Any order for service may from time to time be varied by the Court with respect to the mode of service directed by the order, as occasion may require.

Expenses of service by Bailiff. Ib. s. 8 (11.) 44. Where the service of process by the Bailiff will be attended with expense, he shall not (except by direction of the Registrar or by order of the Court) be bound to effect the same, unless the reasonable expenses thereof have been previously tendered to him by the party requiring such service; and such expenses shall be costs in the cause or matter.

Summoning Defendant.

Service and return of writ. Ib. s. 10. 45.—(1.) The plaintiff shall cause a copy of the writ of summons to be served on the defendant, and such copy shall contain a memorandum indorsed thereon requiring the defendant to enter an appearance to the action within eight days from the day of such service, or, in case of service out of the jurisdiction, within such time as the Court may have ordered.

O. 9 r. 15. (2.) The person serving the writ shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of the writ shall mention the day on which the indorsement was made. This subsection shall apply to substituted as well as other service.

H. K. Code, s. 10. (3.) The writ shall, within eight days after the service thereof, or, in case of service out of the jurisdiction, within such time as the Court may have ordered, be returned into the Registry and filed therein.

Appearance of Defendant.

Appearance in general. Ib. s. 11. Schedule: Form No. 9. 46. The defendant shall, within eight days from the day of service on him of the writ of summons, or, in case of service out of the jurisdiction, within such time as the Court may have ordered, cause an appearance to the action to be entered for him in the Registry.

Appearance in case of defendant out of jurisdiction. Ib. 47. In every case of service of a writ of summons out of the jurisdiction, the entry of appearance thereto shall specify the name and address of some solicitor, agent, or other person within the jurisdiction on whom substituted service of all further process against the defendant in the action may be effected while the defendant remains out of the jurisdiction, and, in default thereof, the Court may proceed with the action as if no appearance had been entered.

Cross-action against absent plaintiff. Ib. s. 95. 48. Where an action is brought by a plaintiff residing out of the jurisdiction, and it is made to appear, by affidavit or otherwise, to the satisfaction of the Court, that the defendant has a *bonâ fide* claim against the plaintiff which can be conveniently tried by the Court, it shall be lawful

for the Court, in its discretion, to stay proceedings in the action so brought by the absent plaintiff until he has entered an appearance to any cross-action brought by the defendant against him in respect of such claim, on such terms as may seem just.

49. The defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service on him of the writ of summons or to discharge the order authorizing such service.

Liberty to move to set aside service of writ before appearance.
O. 12 r. 30.

Default of Appearance.

50.—(1.) If the defendant fails to enter an appearance within the time hereinbefore limited in that behalf, and it is proved, to the satisfaction of the Court, that the writ was duly served, the Court may give leave to the plaintiff to proceed with the action *ex parte*.

Leave to proceed *ex parte* in case of non-appearance.
H. K. Code, s. 12 (1.)

(2.) The plaintiff may thereupon file his statement of claim, and apply forthwith to have the cause set down for trial.

51. If the defendant enters an appearance at any time before the trial of the action, he may, on such terms as the Court may direct as to the payment of costs or otherwise, be heard in answer to the action, in like manner as if he had duly entered an appearance within the time limited as aforesaid.

Subsequent appearance.
Ib. s. 12 (2.)

52. When the cause has been called on, the Court may proceed to try it *ex parte*, and may, on the evidence adduced by the plaintiff, give such judgment as may appear to be just; but it shall not be obligatory on the Court to decide *ex parte* in the absence of the defendant, and it shall be in the discretion of the Court to issue a warrant to arrest him and detain him till another day appointed for the trial of the cause, and in the meanwhile to attach all or any of his property within the jurisdiction.

Trial *ex parte*.
Ib. s. 12 (3.)

53. Where a defendant or respondent to an originating summons fails to appear within the time limited in that behalf, the plaintiff or applicant may apply to the Court for an appointment for the hearing of the summons, and, on being satisfied that no appearance has been entered, the Court shall appoint a time for the hearing of the summons, on such conditions, if any, as it may think fit.

Procedure on default of appearance to originating summons.
O. 13 r. 15.

CHAPTER II.

PARTIES.

Parties in General.

54. All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions any common question of law or fact would arise; and judgment may be given 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, without any amendment: Provided that if, on the application of any defendant, it appears that such joinder may embarrass or delay the trial of the action, the Court may order separate trials or make such other order as may be expedient. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found to be entitled to relief, unless the Court in disposing of the costs otherwise directs.

General rules as to joinder of persons as plaintiffs.
O. 16 r. 1.

55. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff, on such terms as may be just.

Case of action commenced in name of wrong plaintiff.
Ib. r. 2.

56. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his counterclaim or set-off as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Case of counterclaim where a plaintiff is wrongly joined.
Ib. r. 3.

- General rules as to joinder of persons as defendants.**
O. 16 r. 4.
- 57.—**(1.) All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative; and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.
- Ib. r. 5.* (2.) It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.
- Ib. r. 6.* (3.) The plaintiff may, at his option, join as parties to the same action 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.
- Case of plaintiff in doubt as to person from whom he is entitled to redress.**
Ib. r. 7.
- 58.** Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as is hereinafter mentioned, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.
- Action by or against trustees, executors, and administrators.**
Ib. r. 8.
- 59.—**(1.) Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.
- (2.) This section shall apply to trustees, executors, and administrators sued in proceedings to enforce a security by foreclosure or otherwise.
- Action for prevention of waste, etc.**
Ib. r. 37.
- 60.** In any action for the prevention of waste or otherwise for the protection of property, one person may sue on behalf or for the benefit of himself and all persons having the same interest.
- Case of numerous persons having same interest.**
Ib. r. 9.
- 61.** Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court to defend, in such cause or matter, on behalf or for the benefit of all persons so interested.
- Power to approve compromise in absence of some of the persons interested.**
Ib. r. 9 A.
- 62.** Where in proceedings concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the Court and assenting to the compromise, the Court, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.
- Misjoinder and non-joinder of parties.**
Ib. r. 11.
- 63.—**(1.) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
- (2.) The Court may, at any stage of the proceedings, either on or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, 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 cause or matter, be added.
- (3.) 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 own consent in writing thereto.
- (4.) Every party whose name is so added as a defendant shall be served with a writ of summons, and the proceed-

ings as against such party shall be deemed to have begun only on the service of such writ.

64. Any application to add, or strike out, or substitute a plaintiff or defendant may be made to the Court at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Application to add, or strike out, or substitute parties.
O. 16 r. 12.

65. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court, amend the writ of summons and the copy thereof on the file, and serve such new defendant with such amended writ in the same manner as an original defendant is served.

Procedure where defendant added or substituted.
Ib. r. 13.

66.—(1.) 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 action or other proceeding under this Code.

Appearance, etc., by one party for another.
Indian Code, s. 35.

(2.) 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 such action or proceeding.

(3.) In every such case the authority shall be in writing signed by the party giving it, and shall be filed in the Registry.

Persons under Disability.

67. An infant may sue as plaintiff by his next friend, in the manner heretofore practised, and may, in like manner, defend any action by his guardian appointed for that purpose.

Action by or against infant.
O. 16 r. 16.

68. Where a lunatic or person of unsound mind, not so found by inquisition, might formerly have sued as plaintiff or would have been liable to be sued as defendant in any suit, he may sue as plaintiff in any action by his committee or next friend, and may defend any action by his committee or guardian appointed for that purpose.

Action by or against lunatic, etc.
Ib. r. 17.

69.—(1.) Where default is made by a defendant in entering an appearance to an action, after due service of the writ of summons, and it appears to the Court that he is an infant or a person of unsound mind, not so found by inquisition, so that he is unable of himself to defend the action, the Court may, on the application of the plaintiff or of its own motion, appoint some fit person to be guardian of the defendant for the purpose of the action, by whom he may defend the same.

Appointment of guardian *ad litem* for infant or person of unsound mind, after default in appearance to action.
H. K. Code, s. 15.

(2.) No such order shall be made except on notice, after expiration of the time for appearance and four days at least before the day named in the notice for the hearing of the application; and such notice shall be left at the dwelling-house of the person with whom or under whose care the defendant was at the time of service of the writ of summons, and shall also, in the case of an infant not residing with or under the care of his father or guardian, be served on or left at the dwelling-house of his father or guardian, unless the Court thinks fit to dispense with such last-mentioned service.

70.—(1.) An infant shall not enter an appearance, except by his guardian *ad litem*.

Appearance by infant.
O. 16 r. 18.
Schedule: Form No. 10.

(2.) No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit for that purpose.

71.—(1.) Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for.

Guardian *ad litem* of infant.
Ib. r. 19.

(2.) No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as mentioned in the last preceding section.

72. Before the name of any person shall be used in any action as next friend of any infant or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Registry.

Filing of authority by next friend or relator.
Ib. r. 20.

73. In any cause or matter to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party,

Consent of person under disability to

procedure. any consent as to the mode of taking evidence or as to
 O. 16 r. 21. any other procedure shall, if given, with the consent of
 the Court, by the next friend, guardian, committee, or
 other person acting on behalf of the person under dis-
 ability, have the same force and effect as if such party
 were under no disability and had given such consent:
 Provided that no such consent by any committee of a
 lunatic shall be valid as between him and the lunatic un-
 less given with the special sanction of the Chief Justice.

Administrations and Trusts.

Representa- 74.—(1.) In any case in which the right of an heir-at-
 tion of heir- law, or the next of kin, or a class depends upon the con-
 at-law, next struction which the Court may put upon an instrument,
 of kin, or and it is not known or is difficult to ascertain who is or
 class. are such heir-at-law, next of kin, or class, and the Court
 Ib. r. 32 (a.) considers that, in order to save expense or for some other
 reason, it will be convenient to have the questions of
 construction determined before such heir-at-law, next of
 kin, or class has or have been ascertained by means of in-
 quiry or otherwise, the Court may appoint one or more
 persons to represent such heir-at-law, or to represent all
 or any of such next of kin or class, and the judgment
 of the Court shall be binding upon the person or persons so
 represented.

Ib. r. 32 (b.) (2.) In any other case in which an heir-at-law, or any
 next of kin, or a class is or are represented in any pro-
 ceedings, the Court may, if, having regard to the nature
 and extent of the interest of such persons or of any of
 them, it appears expedient on account of the difficulty of
 ascertaining such persons or in order to save expense,
 appoint one or more persons to represent such heir-at-law,
 or to represent all or any of such next of kin or class, and
 the judgment of the Court shall be binding upon the person
 or persons so represented.

Administra- 75. Any residuary legatee or next of kin entitled to
 tion at suit a judgment or order for the administration of the per-
 of residuary sonal estate of a deceased person may have the same
 legatee, etc. without serving the remaining residuary legatees or next
 Ib. r. 33. of kin.

Administra- 76. Any legatee interested in a legacy charged upon
 tion at suit of immovable property, and any person interested in the pro-
 legatee, etc. ceeds of immovable property directed to be sold, and who
 Ib. r. 34. may be entitled to a judgment or order for the administra-
 tion of the estate of a deceased person, may have the same
 without serving any other legatee or person interested in
 the proceeds of the property.

Administra- 77. Any residuary devisee or heir entitled to the like
 tion at suit judgment or order may have the same without serving
 of residuary any co-residuary devisee or co-heir.
 devisee, etc. Ib. r. 35.

Execution of 78. Any one of several *cestuis que trustent* under any
 trust at suit deed or instrument entitled to a judgment or order for
 of *cestui que* the execution of the trusts of the deed or instrument
 trust. may have the same without serving any other *cestui que*
 Ib. r. 36. trust.

Administra- 79. Any executor, administrator, or trustee entitled
 tion at suit thereto may have a judgment or order against any one
 of executor, legatee, next of kin, or *cestui que trust* for the administra-
 etc. tion of the estate or the execution of the trust.
 Ib. r. 38.

Conduct of 80. The Court may require any person to be made
 action or a party to any action or other proceeding, and may give
 proceeding. the conduct of the action or proceeding to such person
 Ib. r. 39. as it may think fit, and may make such order in any par-
 ticular case as it may think just for placing the defendant
 on the record on the same footing in regard to costs as
 other parties having a common interest with him in the
 matters in question.

Service of 81.—(1.) Where, in any action for the administration
 notice of of the estate of a deceased person, or for the execution of
 judgment in the trusts of any deed or instrument, or for the partition
 action for or sale of any immovable property, a judgment or order has
 administra- been pronounced or made—
 tion of estate, etc., and effect thereof.

Ib. r. 40.

(a.) for the making of inquiries; or

(b.) for the taking of accounts; or

(c.) affecting the rights or interests of persons not parties to the action,

the Court may direct that any persons interested in the estate, or under the trust, or in the immovable property shall be served with notice of the judgment or order; and after

such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order.

(2.) Any person so served may, within one month after such service, apply to the Court to discharge, vary, or add to the judgment or order.

(3.) It shall not be necessary for any person served with notice of any judgment or order to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings on entering an appearance in the Registry in the same manner, and subject to the same provisions, as a defendant entering an appearance. *O. 16 r. 41.*

(4.) A memorandum of the service on any person of notice of the judgment or order in any action under this section shall be entered in the Registry, on due proof by affidavit of such service. *Ib. r. 42.*

(5.) Notice of a judgment or order served pursuant to this section shall be entitled in the action, and there shall be indorsed thereon a memorandum of such notice. *Ib. r. 43. Schedule: Form No. 11. Ib. r. 44.*

(6.) Notice of a judgment or order on an infant or person of unsound mind, not so found by inquisition, shall be served in the same manner as a writ of summons in an action.

82. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him. *Action to execute trusts of will. Ib. r. 45.*

83. If in any cause or matter it appears to the Court that any deceased person who was interested in the matter in question has no legal personal representative, the Court may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause or matter, on such notice to such persons, if any, as the Court may think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased person had been a party to the cause or matter. *Case of no legal personal representative of deceased person interested in matter in question. Ib. r. 46.*

84.—(1.) In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, except by leave of the Court, be entitled to appear, either in Court or in Chambers, on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. *Right to appear on claim against estate under administration. Ib. r. 47.*

(2.) The Court may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, on such terms as to costs or otherwise as it may think fit.

Third Party Procedure.

85.—(1.) Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the action, he may, by leave of the Court, issue a notice (hereinafter called the third-party notice) to that effect, sealed with the seal of the Court. *Right of defendant to give third party notice, and filing and service thereof. Ib. r. 48. Schedule: Form No. 12.*

(2.) A copy of such notice shall be filed in the Registry, and shall be served on such person in the same manner as a writ of summons in an action.

(3.) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court, be served within the time limited for filing the statement of defence of such defendant.

(4.) With the notice there shall be served a copy of the statement of claim.

86.—(1.) If a person, not a party to the action, who is served as mentioned in the last preceding section (hereinafter called the third party) desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within eight days from the service of the notice. *Right of third party served to appear and dispute liability of defendant or of himself. Ib. r. 49.*

(2.) In default of his so doing, he shall be deemed to admit the validity of any judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice: Provided that a person so served and failing to appear within the said period of eight days may apply to the Court for leave to appear, and such leave may be given on such terms, if any, as the Court may think just.

Procedure where third party does not appear, and judgment is suffered by default.
O. 16 r. 50.

87. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffers judgment by default, he shall be entitled at any time after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice: Provided that it shall be lawful for the Court to set aside or vary such judgment on such terms as may seem just.

Procedure where third party does not appear, and action is decided in favour of plaintiff.
Ib. r. 51.

88.—(1.) Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the Court may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: Provided that execution thereof shall not be issued without leave of the Court until after satisfaction by such defendant of the judgment against him.

(2.) If the action is finally decided in the plaintiff's favour otherwise than by trial, the Court may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by such defendant of the judgment against him.

Application for directions where third party appears.
Ib. r. 52.
Schedule: Form No. 13.

89. Where a third party enters an appearance in the action, the defendant giving the notice may apply to the Court for directions, and the Court, on the hearing of such application, may, if it is satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the Court may direct; and, if it is not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

Directions which may be given where third party appears.
Ib. r. 53.
Schedule: Form No. 14.

90. The Court, on the hearing of the application mentioned in the last preceding section, may, if it appears desirable to do so, give the third party liberty to defend the action, on such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as the Court may think proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

Decision of questions of costs.
Ib. r. 54.

91. The Court may decide all questions of costs as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

Case of defendant claiming contribution or indemnity against co-defendant.
Ib. r. 55.

92. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

Change of Parties by Marriage, etc.

Cause not to abate by reason of marriage, etc., of party

93. A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the conveyance, assignment, crea-

tion, or devolution of any estate or title *pendente lite*; if cause of action survives, nor to become defective by conveyance of estate, etc. *O. 17 r. 1.*

94. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court may, if it is deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as is hereinafter prescribed, and on such terms as the Court may think just, and shall make such order for the disposal of the cause or matter as may be just. *Service of notice on husband, etc., in case of marriage, etc., of party. Ib. r. 2.*

95. In case of the conveyance, assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. *Continuance of cause by or against successor in title. Ib. r. 3.*

96. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained *ex parte* on application to the Court, upon an affidavit of such change or transmission of interest or liability or of such person interested having come into existence. *Order to carry on proceedings in case of marriage, etc., causing change of interest. Ib. r. 4.*

97.—(1.) An order obtained under the last preceding section shall, unless the Court otherwise directs, be served on the continuing party or parties or their solicitors, and also on each such new party, unless the person making the application is himself the only new party. *Service of order and effect thereof. Ib. r. 5.*

(2.) The order shall from the time of such service, subject nevertheless to the next two succeeding sections, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons in an action.

98. Where any person being under no disability or under no disability other than coverture, or being under any disability other than coverture but having a guardian *ad litem* in the cause or matter, is served with an order to carry on proceedings under section 96, such person may apply to the Court to discharge or vary such order at any time within twelve days from the service thereof. *Application to discharge order by person not under disability, etc. Ib. r. 6.*

99. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with an order to carry on proceedings under section 96, such person may apply to the Court to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such person, and until such period of twelve days has expired such order shall have no force or effect as against such last-mentioned person. *Application to discharge order by person under disability. Ib. r. 7.*

100. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and, in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by section 390. *Procedure where plaintiff or defendant dies, and person entitled to proceed fails to do so. Ib. r. 8.*

101. Where any cause or matter becomes abated, or in the case of any such change of interest as is in this Chapter provided for, the solicitor for the plaintiff or the person having the conduct of the cause or matter, as *Entry of abatement, etc., in Cause-Book. Ib. r. 9.*

the case may be, shall certify the fact to the Registrar, who shall cause an entry thereof to be made in the Cause-Book opposite to the name of such cause or matter.

Striking out of cause abated, etc., for a year.
O. 17 r. 10. **102.** Where any cause or matter has been standing for one year in the Cause-Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause-Book.

CHAPTER III.

JOINDER OF CAUSES OF ACTION.

General rule as to joinder in one action of several causes of action.
O. 18 r. 1. **103.** Subject to the following sections of this Chapter, the plaintiff may unite in the same action several causes of action, but if it appears to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may order separate trials of any of such causes to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Rule as to joinder of other causes of action with action for recovery of immovable property.
Ib. r. 2. **104.** No cause of action shall, except by leave of the Court, be joined with an action for the recovery of immovable property, except claims in respect of mesne profits, or arrears of rent, or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held or for any wrong or injury to the premises claimed: Provided that nothing in this Chapter shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of immovable property within the meaning of this Chapter: Provided, also, that in case any mortgage security is foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may, by motion or summons, apply to the Court for an order for the delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case may require.

Claims by trustee in bankruptcy.
Ib. r. 3. **105.** Claims by a trustee in bankruptcy as such shall not, except by leave of the Court, be joined with any claim by him in any other capacity.

Claims by or against husband and wife.
Ib. r. 4. **106.** Claims by or against husband and wife may be joined with claims by or against either of them separately.

Claims by or against executor or administrator.
Ib. r. 5. **107.** Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided 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.

Claims by joint plaintiffs.
Ib. r. 6. **108.** Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Provision as to ss. 106-8.
Ib. r. 7. **109.** The last three preceding sections shall be subject to sections 103 and 110.

Remedy of defendant for misjoinder of causes of action.
Ib. rr. 8, 9. **110.**—(1.) Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together may at any time apply to the Court for an order confining the action to such of the causes of action as may be conveniently disposed of together.

(2.) If, 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 together, the Court may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

CHAPTER IV.

PLEADINGS.

General Rules of Pleading.

Rules of pleading.
O. 19 r. 1. **111.** The following rules of pleading shall be used in the Court.

112.—(1.) Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

Form of pleading.
O. 19 r. 4.

(2.) It shall, when necessary, be divided into paragraphs, numbered consecutively, and each paragraph shall, as nearly as may be, contain a separate and distinct statement or allegation.

(3.) Dates, sums, and numbers shall be expressed in figures and not in words.

113. Signature of counsel shall not be necessary; but where a pleading has been settled by counsel it shall be signed by him; and, if not so settled, it shall be signed by the solicitor, or by the party, if he sues or defends in person.

Signature of pleading.
Ib.

114. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items, if necessary) shall be stated in the pleading: Provided that if the particulars are of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

Particulars to be given in case of misrepresentation, fraud, etc.
Ib. r. 6.

115. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, on such terms as to costs and otherwise as may be just.

Ordering of further and better particulars.
Ib. r. 7.

116.—(1.) The party at whose instance any particulars have been delivered under an order of the Court shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons.

Time for pleading after delivery of particulars.
Ib. r. 8.

(2.) Except as in this section provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings or give any extension of time.

117. Nothing in this Code shall affect the right of any defendant to plead not guilty by statute; and every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had: Provided that if the defendant so pleads, he shall not plead any other defence to the same cause of action, without the leave of the Court.

Plea of not guilty by statute.
Ib. r. 12.

118. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted, in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

Admission of fact not specifically denied.
Ib. r. 13.

119. Any condition precedent the performance or occurrence of which is intended to be contested shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Condition precedent to be specified in certain cases.
Ib. r. 14.

120. The defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, statute of limitations, release, payment, performance, facts showing illegality either by statute or common law, or the Statute of Frauds.

Pleading to raise all grounds of defence or reply.
Ib. r. 15.

121. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Prohibition of departure in pleading.
Ib. r. 16.

"Securities" includes stocks, funds, and shares; and, so far as relates to payments into Court, includes Imperial Government securities, and any security of any foreign state, any British possession, or any body corporate or company, or standing in books kept by any body corporate, company, or person in the United Kingdom or in this Colony, and all stocks, funds, and effects:

"Stock" includes fully paid up shares; and, so far as relates to vesting orders made by the Court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein:

"The Court" means the Supreme Court:

"Transfer", in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee:

"Trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception "trust" and "trustee" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person.

PART I.

THE OFFICIAL TRUSTEE.

Appointment of Official Trustee. *Ord. No. 7 of 1873 s. 3.* **3.**—(1.) For the purpose of carrying into effect the provisions of this Part, it shall be lawful for the Governor from time to time to appoint a fit and proper person to be Official Trustee under this Ordinance.

(2.) The said office shall have perpetual succession, and all lands or any interests therein, and all moneys, stocks, and securities and land which may be vested in the Official Trustee under this Part shall be deemed to be vested in the Official Trustee for the time being, without any further transfer or conveyance.

Payment of trust moneys into bank to credit of Official Trustee. *Ib. s. 4 and 56 & 57 Vict. c. 53 s. 42.* **4.** Trustees, or the majority of trustees, having in their hands or under their control any moneys belonging to any trust, shall be at liberty, on filing in the Registry of the Court an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the privity of the Official Trustee and in accordance with such directions as they may receive for the purpose from him into the Court; and the said trust moneys shall be paid through the Treasury into the bank of the Government on deposit bearing interest, or otherwise, to the account of the Official Trustee (by his official designation) in the matter of the particular trust (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the Court.

Transfer of trust securities into name of Official Trustee. *Ord. No. 7 of 1873 s. 4.* **5.** Trustees, or the majority of trustees, having any securities standing in their names in the books of any public company or corporation established in the Colony, or in the names of any deceased persons of whom they are personal representatives, upon any trust, shall be at liberty, on filing such affidavit as aforesaid, to transfer such securities, with such privity and in accordance with such directions as aforesaid, into the name of the Official Trustee (by his official designation) or to deposit the same in his name in such bank as aforesaid in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the Court.

Conveyance of land in trust to Official Trustee. *Ib.* **6.** Trustees, or the majority of trustees, in whom any land within the Colony is or becomes vested upon any trust shall be at liberty, on filing such affidavit as aforesaid, to convey such land, with such privity and in accordance with such directions as aforesaid, to the Official Trustee, in trust to attend the orders of the Court.

Certificate to be given by Official Trustee. *Ib.* **7.** In every such case as aforesaid the certificate of the Official Trustee for the moneys so paid, or of the transfer or deposit of such securities, or of the conveyance of such land shall be a sufficient discharge to such trustees or other persons for the moneys so paid, or the stocks or securities so transferred or deposited, or the land so conveyed as aforesaid.

133. Where the circumstances of the case appear to require it, the Court may, on the application of the opposite party or of its own motion, order any party to verify his pleading, or any part thereof, upon oath or by affidavit.

Verification of pleading.
H. K. Code, ss. 24 (2), 33 (16.)

134. Every pleading shall be as brief as the nature of the case will admit, and the Registrar, in taxing the costs of the action, shall at the instance of any party, or may of his own motion, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

Costs of prolix pleading.
O. 19 r. 2.

Statement of Claim.

135.—(1.) After the appearance of the defendant to the action, or, in case of his non-appearance, then by leave of the Court, the plaintiff may file in the Registry a statement of his claim and of the relief or remedy required in the action.

Filing of statement of claim.
H. K. Code, s. 24 (1.)
Schedule:

(2.) At any time after his appearance to the action, the defendant may give notice in writing to the plaintiff or his solicitor requiring him to file his statement of claim; and the plaintiff shall, unless otherwise ordered by the Court, file his statement of claim within five weeks from the time of his receiving such notice.

Form No. 15.
O. 20 r. 1 (b.), (c.)

(3.) In no case where the defendant has appeared shall a statement of claim be filed more than six weeks after the appearance has been entered, unless otherwise ordered by the Court.

Ib. r. 1 (d.)

136. The statement of claim shall specify the name, description, and place of abode of the plaintiff and of the defendant, so far as they can be ascertained, and shall correspond in those particulars with the writ of summons.

Description of parties.
H. K. Code, s. 24 (1.)

137. The statement of claim may alter, modify, or extend the plaintiff's claim without any amendment of the indorsement of the writ of summons.

Claim beyond indorsement on writ.
O. 20 r. 4.

138.—(1.) The statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court may think just, to the same extent as if it had been asked for.

Mode of stating prayer for relief.
Ib. r. 6.

(2.) The same rule shall apply to any relief claimed by the defendant in his statement of defence and to any counterclaim made by him.

139.—(1.) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

Mode of stating distinct claims.
Ib. r. 7.

(2.) The same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts.

Service of Statement of Claim.

140. After the filing of the statement of claim, the plaintiff shall forthwith cause a copy thereof under the seal of the Court to be served on the defendant, and such copy shall contain a memorandum indorsed thereon requiring the defendant to file a statement of defence to the statement of claim within three weeks from the day of such service, or, in a case of service out of the jurisdiction, within such time as the Court may have ordered: Provided that no such service of the statement of claim shall be required to be made on any defendant who has failed to enter an appearance and as against whom the plaintiff has obtained the leave of the Court to proceed with his action *ex parte*.

Service of statement of claim on defendant who has appeared.
H. K. Code, s. 29 (1.)

141. Where service of the writ of summons is directed to be made out of the jurisdiction, the Court may order that the statement of claim be filed forthwith and that a copy thereof under the seal of the Court be served on the defendant concurrently with the writ.

Power to order service forthwith where writ to be served out of jurisdiction.

Staying Proceedings for Defect in Statement of Claim.

142. Where a statement of claim is defective on the face of it by reason of non-compliance with any provision of this Code, the Court may, either on the application of the defendant or of its own motion, make an order to stay proceedings in the action until the defect is remedied.

Ib. s. 29 (2.)
Power to stay proceedings where statement of claim is defective.
Ib. s. 30.

Statement of Defence.

- Time for filing statement of defence. *H. K. Code, s. 33 (1.)*
Schedule: Form No. 16.
- 143.** The defendant shall file in the Registry a statement of defence to the statement of claim within three weeks from the date of the service thereof, or, in a case of service out of the jurisdiction, within such time as the Court may have ordered.
- Application for extension of time. *Ib. s. 33 (1), (2.)*
- 144.—**(1.) The defendant may apply to the Court for further time to file his statement of defence, on a summons stating the further time required.
(2.) The application, unless it is consented to, must be supported by affidavit, or, if the Court in its discretion permits, by oral evidence upon oath, showing that there is reasonable ground for the application and that it is not made for the purpose of delay.
- Filing statement of defence after expiration of time. *Ib. s. 33 (4), (5.), (6.)*
- 145.—**(1.) If the defendant neglects to file a statement of defence within the time or further time allowed, as the case may be, he shall not be at liberty to file a statement of defence without the leave of the Court or the consent of the plaintiff.
(2.) The Court may grant such leave, on such terms as may seem just, by order made on the application of the defendant.
- Mode of denying allegations made in statement of claim. *Ib. s. 33 (9.)*
O. 21 rr. 1, 2.
- 146.—**(1.) The statement of defence must deny all such material allegations in the statement of claim as the defendant intends to deny at the trial.
(2.) In an action for a debt or liquidated demand in money comprised in section 19, a mere denial of the debt shall be inadmissible.
(3.) In an action upon a bill of exchange, promissory note, or cheque, a defence in denial must deny some matter of fact, as, for example, the drawing, making, indorsing, accepting, or notice of dishonour of the bill or note.
- No denial necessary as to damages. *Ib. r. 4.*
- 147.** No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.
- Costs of allegation improperly denied or not admitted. *Ib. r. 9.*
- 148.** Where the Court is of opinion that any allegation of fact denied or not admitted by the statement of defence ought to have been admitted, the Court may make such order as may be just with respect to any extra costs occasioned by its having been denied or not admitted.
- Plea of general issue. *Ib. r. 19.*
- 149.** Where a party pleads the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament or Ordinance, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Act of Parliament on which he relies was passed, and also the chapter and section of such Act, or the year, number, and section of the Ordinance on which he relies, as the case may be, and shall specify whether such Act or Ordinance is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament or Ordinance.
- Plea in abatement. *Ib. r. 20.*
- 150.** No plea or defence shall be pleaded in abatement.
- Service of statement of defence on plaintiff. *Nem.*
- 151.** After the filing of the statement of defence the defendant shall forthwith cause a copy thereof under the seal of the Court to be served on the plaintiff.
- Defence of tender before action. *O. 22 r. 3.*
- 152.** With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.
- Payment into Court in satisfaction of claim, or with denial of liability. *Ib. r. 1.*
- 153.** Where an action is brought to recover a debt or damages, any defendant may, before or at the time of filing his statement of defence, or at any later time by leave of the Court, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability, (except in an action or counterclaim for libel or slander) pay money into Court which shall be subject to the provisions of section 157: Provided that, in an action on a bond under the Act of Parliament 8 and 9 William III, Chapter 11, entitled "An Act for the better preventing Frivolous and Vexatious Suits," payment into Court shall be admissible to particular breaches only, and not to the whole action.

Certain Special Defences.

154. Payment into Court shall be signified in the statement of defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

Pleading of payment into Court. *O. 22 r. 2.*

155. If the defendant pays money into Court before filing his statement of defence, he shall serve on the plaintiff a notice in writing specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made.

Payment into Court before defence. *Ib. r. 4.*

156. In the following cases of payment into Court under this Chapter, namely,—

Payment over to plaintiff in certain cases of money paid into Court. *Ib. r. 5.*

(1.) when payment into Court is made before the filing of the statement of defence;

(2.) when the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is not denied in the statement of defence; and

(3.) when payment into Court is made with a defence setting up a tender of the sum paid,

the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the Court otherwise orders.

157. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the statement of defence, the following rules shall apply:—

Procedure where payment into Court is made with denial of defendant's liability. *Ib. r. 6.*

(1.) the plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction, in which case the money shall remain in Court subject to the provisions hereinafter contained;

(2.) if the plaintiff accepts the sum so paid in, he shall after service on the defendant of a notice in writing accepting the sum paid in in satisfaction of the claim or cause of action in respect of which it has been paid in, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court otherwise orders;

(3.) if the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court, and be subject to the order of the Court, and shall not be paid out of Court except in pursuance of an order of the Court;

(4.) if the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the sum paid in shall be applied, so far as may be necessary, in satisfaction of the plaintiff's claim, and the balance, if any, shall, under such order, be repaid to the defendant; and

(5.) if the plaintiff proceeds with the action in respect of such claim or cause of action and the defendant succeeds in respect thereof, the whole sum paid in shall, under such order, be repaid to the defendant.

158. The plaintiff, when payment into Court is made before the filing of the statement of defence, may, within four days after the receipt of notice of such payment, or when such payment is first signified in the statement of defence, may within four days after service of the statement of defence, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant accordingly, and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the Court otherwise orders, and, in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed.

Acceptance of sum paid into Court before defence. *Ib. r. 7.*

Payment into Court in consolidated action.
O. 22 r. 8. **159.** Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under the provisions of this Chapter relating to payment into Court and tender in the same manner as in the action tried.

Payment into Court not to be communicated to jury.
Ib. r. 22. **160.** Where a cause or matter is tried by the Court with a jury no communication to the jury shall be made, until after the verdict has been given, either of the fact that money has been paid into Court or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into Court.

Defence of set-off to claim for money.
H. K. Code, s. 36 (1.) **161.—(1.)** A defence of set-off to a claim for money, whether in debt or in damages, must be accompanied by a statement of the particulars of the set-off.

(2.) If it is pleaded as a sole defence, it must also, unless it extends to the whole amount of the plaintiff's claim, be accompanied by payment into Court of the amount to which, on the defendant's showing, the plaintiff is entitled; and, in default of such payment, the defendant shall be liable to bear the costs of the action, even if he succeeds in his defence to the extent of the set-off pleaded.

Making of counter-claim, etc., in lieu of set-off.
Ib. s. 36 (2.) **162.** Where the defendant raises a defence by way of set-off which, in the opinion of the Court, is not admissible as set-off, the Court may, either before or at the trial, on his application, give him liberty to withdraw such defence and to make a counterclaim or bring a cross-action; and may make such order for the trial of the action and the counterclaim or cross-action, together or otherwise, and in such manner and on such terms as to costs and other matters as may seem just.

Counterclaim.

Cases in which counterclaim may be allowed, and procedure thereon.
Ib. s. 37. Schedule: Form No. 17. **163.—(1.)** Where a defendant in his statement of defence raises any specific defence, and it appears to the Court that, on such defence being established, he may be entitled to relief against the plaintiff in respect of the subject-matter of the action, the Court may, on the application of the defendant either before or at the trial, if under the circumstances of the case it thinks fit, give liberty to the defendant to file a counterclaim by a cross-statement of claim in the same action, asking for relief against the plaintiff, either alone or along with other persons; and may make such order for the conduct and trial of the action and the counterclaim, together or otherwise, and in such manner and on such terms as to costs and other matters, as may seem just.

(2.) The Court may, if in any case it thinks fit, require the plaintiff to give security to the satisfaction of the Court, by deposit or otherwise, to abide by and perform the decision of the Court on the counterclaim.

Appearance by third party to counter-claim.
O. 21 r. 13. **164.** Any person not originally a party to the action who is served with a counterclaim must appear thereto as if he had been served with a writ of summons in an action.

Time for reply to counter-claim.
Ib. r. 14. **165.** Any person named as a party to a counterclaim may file a statement of defence thereto within the time within which he might file a statement of defence if it were a statement of claim.

Statement of defence to counter-claim.
O. 23 r. 4. **166.** Where a counterclaim is pleaded, a statement of defence thereto shall be subject to the rules applicable to statements of defence.

Continuance of counter-claim.
O. 21 r. 16. **167.** If in any case in which the defendant sets up a counterclaim the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.

Subsequent Pleadings.

Rule as to subsequent pleadings.
O. 23 r. 2. Schedule: Form No. 18. **168.** No pleading subsequent to statement of defence shall be pleaded without the leave of the Court, and then only on such terms as the Court may think fit.

Default of Pleading.

Default of third party in pleading.
O. 27 r. 41. **169.** In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in filing any pleading, the opposite party may apply to the Court for such judgment, if any, as upon the pleadings he may appear to be

entitled to; and the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Matters arising pending the Action.

170.—(1.) Any ground of defence which has arisen after action brought, but before the defendant has filed his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with any other ground of defence.

Pleading matter arising before statement of defence or reply.
H. K. Code,
s. 63.
O. 24 r. 1.

(2.) If, after a statement of defence has been filed, any ground of defence arises to any set-off alleged therein by the defendant, it may be raised by the plaintiff in his reply, if any, either alone or together with any other ground of reply.

171. Where any ground of defence arises after the defendant has filed his statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, if any, or after the time limited for filing a reply, if any, has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court, file a further statement of defence or further reply as the case may be, setting forth the same.

Pleading matter arising after statement of defence or reply.
Ib. r. 2.

172. Where the defendant, in his statement of defence or in a further statement of defence as in the last preceding section mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may file a confession of such defence, and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court, either before or after the filing of such confession, otherwise orders.

Confession of defence founded on matter arising pending the action.
Ib. r. 3.

Proceedings in lieu of Demurrer.

173. No demurrer shall be allowed in any action or other proceeding.

Abolition of demurrer.
O. 25 r. 1.

174. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Court at or after the trial, provided that, by consent of the parties or by order of the Court on the application of any party, the same may be set down for hearing and disposed of at any time before the trial.

Right of party to raise point of law by pleading, and procedure thereon.
Ib. r. 2.
Schedule:
Form No. 19.

175. If, in the opinion of the Court, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the Court may thereupon dismiss the action or make such other order therein as may be just.

Dismissal of action, etc., on point of law.
Ib. r. 3.

176. The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or defence, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

Striking out pleading where no reasonable cause of action disclosed, etc.
Ib. r. 4.

177. No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby; and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

Declaratory judgment or order.
Ib. r. 5.

CHAPTER V.

AMENDMENT.

178. The Court may, at any stage of the proceedings, allow either party to alter or amend his indorsement, or pleading, or particulars, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Amendment of indorsement, etc.
O. 28 r. 1.

179. Application for leave to amend may be made by either party to the Court, and such amendment may be allowed on such terms as to costs or otherwise as may be just.

Application for leave to amend.
Ib. r. 6.

- Right of amendment *ex parte*.**
H. K. Code, s. 32 (5.)
Amendment of statement of claim after defence.
Ib. s. 39 (2.)
- 180.** The statement of claim may be amended at any time before the statement of defence has been filed, by leave of the Court obtained *ex parte*.
- 181.** Where the plaintiff considers the contents of the statement of defence to be such as to render an amendment of the statement of claim necessary or desirable, he may obtain *ex parte* an order to amend the statement of claim, on satisfying the Court that the amendment is not intended for the purpose of delay or vexation, but is considered to be material for the plaintiff's case.
- Failure to amend after order.**
O. 28 r. 7.
- 182.** If a party who has obtained an order for leave to amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court.
- Date of order and date of amendment to be marked.**
Ib. r. 9.
- 183.** Whenever any indorsement, pleading, or particulars is or are amended, the same when amended shall be marked with the date of the order, if any, under which the same is or are so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended the day of , 19 , pursuant to order of dated the day of , 19 ."
- Filing and service of amended pleading.**
Ib. r. 10.
- 184.** Whenever any indorsement, pleading, or particulars is or are amended, such amended document shall be filed within the time allowed for amending the same, and a copy thereof under the seal of the Court shall forthwith be served on the opposite party.
- Correction of clerical mistake in judgment, etc.**
Ib. r. 11.
- 185.** Any clerical mistake in any judgment or order, or any error arising therein from any accidental slip or omission, may at any time be corrected by the Court, on motion or summons, without an appeal.
- General power to amend.**
Ib. r. 12.
- 186.** The Court may at any time, and on such terms as to costs or otherwise as the Court may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

CHAPTER VI.

DISCOVERY, INSPECTION, AND ADMISSIONS.

Discovery.

- Discovery by interrogatories.**
O. 31 r. 1.
- 187.** In any cause or matter the plaintiff or defendant may, by leave of the Court, deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided, also, that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.
- Decision on interrogatories to be delivered.**
Ib. r. 2.
Schedule: Form No. 20.
- 188.—(1.)** On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court.
- (2.)** 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 may consider necessary either for disposing fairly of the cause or matter or for saving costs.
- Costs of interrogatories.**
Ib. r. 3.
- 189.** In adjusting the costs of the cause or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

190. If any party to a cause or matter is a body corporate or a joint stock company, whether incorporated or not, or any other body of persons 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, company, or body, and an order may be made accordingly.

Interrogatories for corporation or company.
O. 31 r. 5.

191.—(1.) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous.

Setting aside interrogatories.
Ib. r. 7.

(2.) Any application for this purpose may be made within seven days after service of the interrogatories.

192. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

Answer to interrogatories.
Ib. r. 8.

193. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Schedule:
Form No. 21.
Objections to interrogatories by answer.
Ib. r. 6.

194. No exception shall be taken to any affidavit in answer to interrogatories, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court on summons.

Objection to affidavit in answer.
Ib. r. 10.

195. If any person interrogated omits to answer or answers insufficiently, 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 answer further, either by affidavit or by *vivâ voce* examination, as the Court may direct.

Order to answer or answer further.
Ib. r. 11.

196.—(1.) Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any cause or matter to make discovery upon oath of the documents which are or have been in his possession or power, relating to any matter in question therein.

Application for discovery of documents.
Ib. r. 12.

(2.) On the hearing of such application, the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court is of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

(3.) The affidavit to be made by the party against whom such order has been made shall specify which, if any, of the documents therein mentioned he objects to produce and on what grounds.

Ib. r. 13.
Schedule:
Form No. 22.

197.—(1.) The Court may, on the application of any party to a cause or matter, at any time, and whether an affidavit of documents has or has not already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are or has or have at any time been in his possession or power; and, if not then in his possession, when he parted with the same, and what has become thereof.

Discovery of specific documents.
Ib. r. 19A.

(2.) Such application shall be made on an affidavit stating that, in the belief of the deponent, the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that it or they relates or relate to the matters in question in the cause or matter or to some of them.

198. It shall be lawful for the Court, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court may think right; and the Court may deal with such documents, when produced, in such manner as may appear just.

Production of documents.
Ib. r. 14.

Inspection.

Inspection of document referred to in pleadings, etc. **O. 31 r. 15.** **199.**—(1.) Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings, particulars, or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice or of his solicitor, and to permit him or his solicitor to take copies thereof.

(2.) Any party who does not comply with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he satisfies the Court that such document relates only to his own title, he being a defendant in the cause or matter, or that he had some other cause or excuse which the Court may deem sufficient for not complying with such notice; in which case the Court may allow the same to be put in evidence, on such terms as to costs and otherwise as the Court may think fit.

Time and place for inspection when notice for inspection given. **Ib. r. 17.**

200. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in an affidavit for the discovery of documents, or, if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time, within three days from the delivery thereof, at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or, in the case of bankers' books, or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which, if any, of the documents he objects to produce and on what grounds.

Application for inspection. **Ib. r. 18.**

201.—(1.) If the party served with notice under the last preceding section omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, 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 is of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

(2.) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded on an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court is of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

Order for verified copies of entries in business book. **Ib. r. 19A.**

202. Where inspection of any business book is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original book, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

Claim of privilege. **Ib.**

203. Where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

Discovery and Inspection.

Premature discovery or inspection. **Ib. r. 20.**

204. If 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 cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined

before deciding on the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

205.—(1.) If any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall be liable to attachment. Non-compliance with order for discovery or inspection. O. 31 r. 21.

(2.) He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his statement of defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or applying may apply to the Court for an order to that effect and an order may be made accordingly.

206.—(1.) Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order; but the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order. Service of order on solicitor. Ib. r. 22.

(2.) A solicitor, on whom an order against any party for interrogatories or discovery or inspection is served under this section, who neglects without reasonable excuse to give notice thereof to his client shall be liable to attachment. Ib. r. 23.

207. Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories, without putting in the others or the whole of such answer: Provided that in such case the Judge may look at the whole of the answers, and if he is of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in. Using answer to interrogatories at trial. Ib. r. 24.

208. In any action against or by a Bailiff in respect of any matter connected with the execution of his office, the Court may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned. Discovery against Bailiff. Ib. r. 28.

209. The preceding provisions of this Chapter shall apply to infant plaintiffs and defendants and to their next friends and guardians *ad litem*. Discovery by or against infant, etc. Ib. r. 29.

Admissions, etc.

210. Any party may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. Notice of admission. O. 32 r. 1.

211.—(1.) Any party may call upon any other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving such document shall be paid by the party so refusing or neglecting, whatever the result of the cause or matter may be, unless at the trial or hearing the Court certifies that the refusal or neglect to admit was reasonable, or unless the Court at any time otherwise orders or directs. Notice to admit document. Ib. r. 2.

(2.) No costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

212. Any party may, by notice in writing, at any time not later than seven days before the day on which a cause, matter, or issue is to be tried or heard, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice; and in case of refusal or neglect to admit the same within four days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so refusing or neglecting, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court certifies that the refusal or neglect to admit was reasonable, or unless the Court at any time otherwise orders or directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other Notice to admit fact. Ib. r. 4.

occasion or in favour of any person other than the party giving the notice: Provided, also, that the Court may at any time allow any party to amend or withdraw any admission so made, on such terms as may be just.

Evidence of admission. **O. 32 r. 7.** **213.** An affidavit of the solicitor or his clerk of the due signature of any admission made in pursuance of any notice to admit documents or facts shall be sufficient evidence of such admission, if evidence thereof is required.

Judgment or order upon admissions of fact. **Ib. r. 6.** **214.** Any party may, at any stage of a cause or matter, 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; and the Court may, on such application, give such judgment or make such order as the Court may think just.

Evidence of service of notice. **Ib. r. 8.** **215.** An affidavit of the solicitor or his clerk of the service of any notice to produce or admit and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice and of the time when it was served.

Costs of unnecessary notice. **Ib. r. 9.** **216.** If a notice to produce or admit comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

CHAPTER VII.

ISSUES, INQUIRIES, AND ACCOUNTS.

Issues.

Preparation of issues of fact. **O. 33 r. 1.** **217.** Where in any cause or matter it appears to the Court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court.

Order of disposal of issues. **H. K. Code, s. 40 (3.)** **218.** It shall be in the discretion of the Court to direct which issues shall be first disposed of.

Amendment of or addition to issues. **Ib. s. 40 (4.)** **219.** At any time before the decision of the cause or matter, the Court may either amend the issues or frame additional issues, on such terms as it may think fit.

Direction for Inquiries or Accounts.

General power to direct inquiries and accounts. **Ib. s. 13 (4.)** **O. 33 r. 2.** **220.** The Court may, at any stage of a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the usual manner.

Giving of special directions as to mode of taking account. **Ib. r. 3.** **221.** The Court may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that, in taking the account, the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Mode of making up account. **Ib. r. 4.** **222.—(1.)** Where any account is directed to be taken, the accounting party, unless the Court otherwise directs, shall make out his account and verify the same by affidavit.

(2.) The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left in the Judge's Chambers or with the Registrar or any referee, as the case may be.

Mode of vouching account. **Ib. r. 4A.** **223.** Upon the taking of any account the Court may direct that the vouchers shall be produced at the office of the solicitor of the accounting party or at any other convenient place, and that only such items as shall be contested or surcharged shall be brought before the Judge in Chambers or the Registrar or referee, as the case may be.

Surcharge. **Ib. r. 5.** **224.** Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party,

stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

225. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts, if any, of such personal estate are outstanding or undisposed of, unless the Court otherwise directs.

Inquiry as to outstanding personal estate.
O. 33 r. 6.

226. Where by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number.

Numbering of accounts and inquiries.
Ib. r. 7.

227. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

Rule as to just allowances.
Ib. r. 8.

228.—(1.) If it appears to the Court, on the representation of the Registrar or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require.

Expediting proceedings in case of undue delay.
Ib. r. 9.

(2.) For the purposes aforesaid, any party or the Registrar may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the Registrar shall be paid by such parties or out of such funds as the Court may direct.

CHAPTER VIII.

SPECIAL CASE.

229.—(1.) The parties to any cause or matter may concur in stating any question of law arising therein in the form of a special case for the opinion of the Court.

Statement of special case on question of law, by concurrence of parties.
O. 34 r. 1.

(2.) The case shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

(3.) On the argument of the case, the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at a trial or hearing.

230. If it appears to the Court that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to an arbitrator or otherwise, the Court may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court may deem expedient; and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Statement of special case on question of law, by order of the Court.
Ib. r. 2.

231. Every special case shall be prepared by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed in the Registry by the plaintiff.

Preparation, signing, and filing of special case.
Ib. r. 3.

232.—(1.) No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind, not so found by inquisition, is a party shall be set down for argument without the leave of the Court.

Leave to set down special case where person under disability is party.
Ib. r. 4.

(2.) The application for such leave must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

- Entry of special case for argument. O. 34 r. 5. Schedule: Form No. 23. Agreement of parties for payment of money, etc., on decision of special case. *Ib.* r. 6. *H. K. Code*, s. 88.
- 233.** Either party may enter a special case for argument by delivering to the Registrar a memorandum of entry, but subject to the provisions of the last preceding section.
- 234.**—(1.) The parties to a special case may, if they think fit, enter into an agreement in writing (which shall not be subject to any stamp duty) that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case,—
- (a.) a sum of money, fixed by the parties 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
 - (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 perform, or shall refrain from doing or performing, some particular act specified in the agreement,
- either with or without costs of the cause or matter, or with the costs left to the discretion of the Court.
- (2.) Where the agreement is for the delivery of some property, movable or immovable, or for the doing or performing or the refraining from doing or performing some 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.
- Judgment and execution on decision. O. 34 r. 6.
- 235.** Upon the decision of the Court on such questions the judgment of the Court may be entered accordingly, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed on appeal.
- Power for persons interested in question as to construction of Act of Parliament, etc., to concur in stating special case for opinion of the Court, and procedure thereon. 13 & 14 *Vict.* c. 35 s. 1.
- 236.**—(1.) It shall be lawful for persons interested or claiming to be interested in any question cognizable in the Court as to the construction of any Act of Parliament, Ordinance, will, deed, or other instrument in writing, or anything therein contained, or as to the title or evidence of title to any movable or immovable property contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter falling within the equitable jurisdiction of the Court or made subject to the jurisdiction or authority of the Court by any statute, not being one of the statutes relating to bankruptcy, and including among such persons all lunatics, married women, and infants, to concur in stating such question in the form of a special case for the opinion of the Court, and it shall also be lawful for all trustees, executors, and administrators to concur in such case.
- (2.) It shall be lawful for the Court, on the hearing of any such special case, to determine the questions raised therein or any of them, and by a judgment to declare its opinion thereon, and, so far as the case admits of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration.
- (3.) Every such declaration of the Court contained in any such judgment shall have the same force and effect as such declaration would have had, and shall be binding to the same extent as such declaration would have been, if contained in a judgment given in an action between the same parties: Provided that if, on the hearing of any such special case, the Court is of opinion that the questions raised thereby or any of them cannot properly be decided upon such case, the Court may refuse to decide the same.
- (4.) Every trustee, executor, administrator, or other person making any payment or doing any act in conformity with the declaration contained in any judgment given upon any such special case shall in all respects be as fully and effectually protected and indemnified by such declaration as if such payment had been made or act done under or in pursuance of the express order of the Court made in an action between the same parties, save only as to any rights or claims of any person in respect of matters not determined by such declaration.
- Ib.* s. 14.
- Ib.* s. 15.
- Application of Chapter 8. O. 34 r. 7.
- 237.** This Chapter shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto, whether under this Code or otherwise.

CHAPTER IX.

ISSUES OF FACT WITHOUT PLEADINGS.

238.—(1.) When the parties to any cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court, proceed to the trial of any such questions of fact without formal pleadings.

Trial of questions of fact agreed upon between parties.
O. 34 r. 9.

(2.) Such questions may be stated for trial in an issue, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court in the same way as the proceedings in an action.

239.—(1.) In any such case the parties may, if they think fit, enter into an agreement in writing (which shall not be subject to any stamp duty) that, on the judgment of the Court being given in the affirmative or negative of the questions of fact stated in the issue,—

Agreement of parties for payment of money, etc., on decision of questions.
Ib. r. 10.
H. K. Code, s. 88.

(a.) a sum of money, fixed by the parties 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

(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 perform, or shall refrain from doing or performing, some particular act specified in the agreement,

either with or without costs of the cause or matter or with the costs left to the discretion of the Court.

(2.) Where the agreement is for the delivery of some property, movable or immovable, or for the doing or performing or the refraining from doing or performing some 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.

240. Upon the finding of the Court on such questions the judgment of the Court may be entered accordingly, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court otherwise orders for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

Judgment and execution on decision.
O. 34 r. 11.

241. The proceedings upon any such issue may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

Record of proceedings.
Ib. r. 12.

CHAPTER X.

INTERLOCUTORY PROCEEDINGS.

Interlocutory Application.

242.—(1.) Interlocutory applications may be made at any stage of an action or other proceeding.

Modes of making interlocutory application.
H. K. Code, s. 42.

(2.) They shall be made either by motion in Court or by summons in Chambers, and shall be entitled in the action or other proceeding.

(3.) Subject to the provisions of this Code and to any general rules or orders of the Court, the Court shall in each case decide whether the application is a proper one to be made by motion in Court or by summons in Chambers, and may, at or before the hearing, if it thinks fit, remove the same into Court or into Chambers, as the case may be.

(4.) In every motion or summons the statute and the particular provisions thereof, if any, under which it is brought shall be stated in the margin.

Motion.

243. Any party to an action or other proceeding who desires to move the Court for an order shall file in the Registry a written motion-paper distinctly stating the terms of the order asked for.

Filing of motion-paper.
Ib. s. 43 (1.)
Schedule :
Form No. 24.

244. The motion may in its terms ask for an order directing more than one thing to be done, and may also be in an alternative form, asking that one or another order be made, so only that the whole order asked for be therein substantially expressed.

Terms of motion.
Ib. s. 43 (2.)

- Amendment of motion-paper. *H. K. Code*, s. 43 (3.) 245. If the motion-paper contains any matter by way of argument or other matter except the proper particulars of the motion itself, the Court may direct the motion-paper to be amended, and make no order thereon until it is amended accordingly by the striking out of such argument or other matter.
- Affidavits in support of motion. *Ib.* s. 43 (4.), (5.) 246.—(1.) There shall be filed with the motion-paper, or as soon thereafter as possible, all affidavits on which the party moving intends to rely.
(2.) No other evidence shall be used in support of the motion except by leave of the Court.
- Time of moving in case of urgency. *Ib.* s. 43 (6.) 247. The party filing the motion-paper may move the Court, in a case of urgency, at any time while the Court is sitting and not engaged in hearing any other matter.
- Motion to be *ex parte* or on notice. *Ib.* s. 43 (7.) 248. Subject to any special provisions regulating any particular case, every motion shall be made *ex parte* in the first instance, unless the Court gives leave to give a notice of motion for a certain day.
- Proceedings on motion *ex parte*. *Ib.* s. 43 (8.), (9.) 249.—(1.) On a motion *ex parte* the party moving shall apply either for an immediate absolute order of the Court in the terms of the motion-paper on his own showing and evidence, or for an order to the opposite party to appear on a certain day and show cause why an order should not be made in the terms of the motion-paper.
(2.) Any party moving the Court *ex parte* may support his motion by argument addressed to the Court on the facts put in evidence by the affidavits filed in support of the motion; and no party to the action or proceeding, although present in Court, other than the party moving, shall, except by leave of the Court, be entitled to be then heard.
- Power of amendment, etc., at hearing. *Ib.* s. 43 (10.) 250. On a motion coming on for hearing, the Court may allow the motion-paper to be amended and additional evidence to be produced by affidavit, or may direct the motion to stand over.
- Power to make order different from order asked for. *Ib.* s. 43 (11.) 251. If at the hearing it appears to the Court, on the evidence adduced in support of the motion, or on any additional evidence which the Court may allow to be adduced in support thereof, that the party moving is entitled to an order, absolute or to show cause, different from the order asked for, and the party moving is willing to take such different order, the Court may make an order accordingly.
- Application to vary or discharge order made on motion *ex parte*. *Ib.* s. 43 (12.) 252. Where an order is made on a motion *ex parte*, any party affected by it may, within ten days after service of it, or within such further time as the Court may allow, apply to the Court by motion to vary or discharge it; and the Court, on notice to the party who has obtained the order, may either refuse to vary or discharge it or vary or discharge it with or without imposing terms as to costs, or security, or other things as may seem just.
- Procedure where notice of motion served. *New.* 253. The provisions of the next five succeeding sections shall apply, with the necessary modifications, in every case where notice of motion has been served on a party.
- Order to show Cause.*
- Return-day of order. *H. K. Code*, s. 44 (1.) 254. An order to show cause shall specify a day when cause is to be shown, to be called the return-day of the order, which shall ordinarily be not less than four days after service of the order.
- Filing of counter affidavits. *Ib.* s. 44 (2.) 255. A person served with an order to show cause may, before the return-day, file affidavits contradicting the evidence used in obtaining the order, or setting forth other facts on which he relies to induce the Court to discharge the order.
- Non-appearance of person served with order. *Ib.* s. 44 (3.) 256. On the return-day, if the person served with the order does not appear, and the Court is not satisfied that service of the order on all proper parties has been duly effected, the Court may enlarge the time and direct further service, or make such other order as may seem just.
- Appearance of person served with order. *Ib.* s. 44 (4.) 257. If the person served with the order appears, or the Court is satisfied that service of the order on all proper parties has been duly effected, the Court may proceed with the hearing of the motion.

258. On the hearing the Court may either discharge the order, or make it absolute, or permit further affidavits to be filed in support of or against it, and may modify the terms of the order so as to meet the merits of the case.

General powers of the Court on hearing.
H. K. Code,
s. 44 (5).

Summons.

259.—(1.) Any party to an action or other proceeding who desires to ask the Court in Chambers for an order shall file in the Registry a copy of the summons which it is desired should be issued for that purpose.

Filing of application for summons.
Ib. s. 45 (1),
(2.)

(2.) Such copy shall be signed by the party or by or in the name of his solicitor.

Schedule:
Forms Nos.
25 and 26.

260. The Registrar may thereupon issue a summons, setting forth the nature of the application and ordering the person to whom it is directed to appear at the time and place directed by the Registrar and specified in the summons.

Issue of summons.
Ib. s. 45 (3.)

261. On the return-day of the summons, if the person to whom the summons is directed appears, or, in his absence, on proof of service of the summons on the person to whom it is directed, the Court may, on the application of the person obtaining the summons, consider and deal with the application in a summary way, and make such order as may be just.

Proceedings on return-day of summons.
Ib. s. 45 (4.)
Schedule:
Form No. 27.

Evidence in Interlocutory Proceedings.

262. The evidence at the hearing of any interlocutory or other application in a cause or matter shall generally be by affidavit.

Taking of evidence by affidavit.
Ib. s. 46 (1.)

263. The Court may, on the application of any party, order the attendance before it for cross-examination of any person making an affidavit.

Cross-examination of person making affidavit.
O. 38 r. 1.

264.—(1.) The Court may, if it thinks it expedient, summon any person to attend to produce any document before it or to be examined *visà voce* by or before it, in like manner as at the trial of an action.

Taking of evidence *visà voce*.
H. K. Code
s. 46.

(2.) Such notice as the Court in each case may think reasonable shall be given to the person summoned and to such persons (being parties to the cause or matter or otherwise interested) as the Court may consider entitled to inspect the document to be produced, or to examine the person summoned, or to be present at his examination, as the case may be.

(3.) The evidence of a witness on any such examination, or on any cross-examination under the last preceding section, shall be taken in like manner, as nearly as may be, as at the trial of an action.

Interlocutory Order.

265. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Preservation, etc., of subject-matter of disputed contract.
O. 50 r. 1.

266. It shall be lawful for the Court, on the application of any party to a cause or matter, to make any order for the sale, by any person named in such order and in such manner and on such terms as the Court may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to be injured by keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Sale of perishable goods, etc.
Ib. r. 2.

267. It shall be lawful for the Court, on the application of any party to a cause or matter and on such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any person to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Detention, preservation, or inspection of property, the subject of cause or matter.
Ib. r. 3.

- Inspection by Judge.**
O. 50 r. 4. **263.** It shall be lawful for any Judge by whom any cause or matter may be tried or heard with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.
- Inspection by jury.**
Ib. r. 5. **269.** The provisions of section 267 shall apply to inspection by a jury, and in such case the Court may make all such orders upon the Registrar or other person as may be necessary to procure the attendance of a special or common jury at such time and place and in such manner as it may think fit.
- Application for order of mandamus, etc.**
Ib. r. 6. **270.—(1.)** An application for an order under section 10 of the Law Amendment Ordinance, 1901, or under section 266 or section 267 of this Code, may be made to the Court by any party. If the application is by the plaintiff for an order under the said section 10, it may be made either *ex parte* or with notice, and if for an order under the said sections, it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it is by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.
- Ib. r. 7.* **(2.)** An application for an order under section 265 may be made by the plaintiff at any time after his right thereto appears from the pleadings, or, if there are no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court.
- Order for recovery of specific property, other than immovable property, subject to lien, etc.**
Ib. r. 8. **271.** Where an action is brought to recover, or a defendant seeks by way of counterclaim to recover, specific property other than immovable property, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court may, at any time after such last-mentioned claim appears from the pleadings, or, if there are no pleadings, by affidavit or otherwise to the satisfaction of the Court, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum, if any, for interest and costs as the Court may direct, and that, on such payment into Court being made, the property claimed be given up to the party claiming it.
- Allowance of income of property *pendente lite*.**
Ib. r. 9. **272.** Where any immovable or movable property forms the subject of any proceedings in the Court, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Court may, at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the immovable property or a part of the movable property, or the whole or part of the income thereof, up to such time as the Court may direct.
- Conduct of sale of trust estate.**
Ib. r. 10. **273.** Where in an action for the administration of the estate of a deceased person or the execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court otherwise directs.
- Date of order when drawn up.**
O. 52 r. 13. **274.** Every order, when drawn up, shall be dated the day of the week, month, and year on which it was made, unless the Court otherwise directs, and shall take effect accordingly.
- Stay of Proceedings.*
- Operation of notice of motion, etc., as stay of proceedings.**
H. K. Code, s. 47 (1.) **275.** No notice of motion or summons shall operate as a stay of proceedings, except by direction or order of the Court, and in such case it shall so operate from the time of the service thereof on the opposite party.
- Dismissal of Action for Want of Prosecution.*
- Application to dismiss action for want of prosecution.**
Ib. s. 49. O. 27 r. 1. **276.—(1.)** If the plaintiff—
(a.) being bound to file a statement of claim, does not file and serve the same within the time allowed for that purpose; or
(b.) does not obtain an order for setting down the cause for trial within one month from the time at which he might first apply for such an order,
the defendant may apply by summons for an order to dismiss the action for want of prosecution.

(2.) On such application, the Court may, if it thinks fit, make an order dismissing the action, or may make such other order and on such terms as to the Court may seem just.

CHAPTER XI.

PRELIMINARIES OF TRIAL.

Setting down Cause for Trial.

277. No cause shall be set down for trial without an order of the Court first obtained on summons.

Order for setting down.
H. K. Code,
s. 48 (1.)

278. At the expiration of the time allowed for filing a statement of defence, and whether such statement has been filed or not, the Court may, on the application of the plaintiff, order the cause to be set down for trial.

Order for setting down on application of plaintiff.
Ib. s. 48 (2.)

279. An order to set down the cause for trial may be made on the application of the defendant, if it appears to the Court, having regard to the state of the pleadings, that the cause is ready to be tried, and that there has been delay on the part of the plaintiff in obtaining an order for setting down the cause, for which the plaintiff has no reasonable excuse, (as the absence or illness of a material witness) and that the defendant is prejudiced, or may reasonably be expected to be prejudiced, by such delay.

Order for setting down on application of defendant.
Ib. s. 48 (3.)

Postponement of Trial.

280.—(1.) The Court may at any time, on a summons taken out by any party thereto, postpone the trial of a cause set down, on being satisfied by evidence upon oath that the postponement will have the effect of better ensuring the trial and determination on the merits of the questions in issue between the parties.

General power to postpone trial of cause.
Ib. s. 50 (1.)
O. 36 r. 34.

(2.) The postponement may be for such time and on such terms, if any, as the Court may think fit.

281. Where any such application is made on the ground of the absence from the Colony of a witness, the Court shall require to be satisfied that his evidence is material and that he is likely to return to the Colony and give evidence within a reasonable time.

Application for postponement for absent witness.
H. K. Code,
s. 50 (2.)

282. Where any such application is made for the purpose of enabling the party applying to obtain the evidence of a witness resident out of the jurisdiction, the Court shall require to be satisfied that the evidence of the witness is material, and that he is permanently residing out of the jurisdiction, or does not intend to come within the jurisdiction within a reasonable time.

Application for postponement for evidence of witness out of jurisdiction.
Ib. s. 50 (3.)

General Trial List and Trial Paper.

283. There shall be kept by the Registrar a general trial list of causes and a trial paper.

Keeping of general trial list and trial paper.
Ib. s. 51 (1.)

284.—(1.) When a cause is set down for trial it shall be placed in the general trial list, and shall be transferred to the trial paper strictly in its order, according as the general trial list becomes exhausted.

Transfer of cause from general trial list to trial paper.
Ib. s. 51 (2.),
(3.)

(2.) The regular order shall in no case be departed from without the special direction of the Court.

285. When a cause is about to be transferred from the general trial list to the trial paper, notice of such transfer shall be served on the parties, and, unless the Court in any particular case directs otherwise, not less than ten days shall be allowed between the service of such notice and the day of trial.

Notice to parties of transfer of cause.
Ib. s. 51 (4.)

286. When any cause has been specially directed by the Court to be heard on a particular day or out of its ordinary turn, the name of the cause shall be placed in the trial paper with the words "by order" subjoined.

Taking cause out of turn.
Ib. s. 51 (5.)

287. In case of the postponement of the trial of any cause from the day appointed in the trial paper by reason of the preceding causes in the trial paper not having been got through, or under any order of the Court made during the sitting on that day, no further notice to either party of the postponement day shall be requisite, unless otherwise ordered by the Court.

Notice of postponement of trial not necessary in certain cases.
Ib. s. 51 (6.)

Modes of Trial.

Order as to mode of trial. *H. K. Code.* s. 53 (2.), (3.) **288.**—(1.) The summons for setting down the cause for trial shall specify the mode of trial desired by the party making the application.

(2.) On the hearing of the summons the Court shall make such order as to the mode of trial as it may think fit, but subject to the provisions hereafter in this Chapter contained.

Right to trial by jury in action of libel, etc. *O. 36 r. 2.* **289.** In any action of libel, slander, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff or the defendant may, in the summons or on the hearing of the summons, as the case may be, signify his desire to have the issues of fact tried by the Court with a jury, and thereupon the same shall be so tried.

Trial without jury. *Ib. r. 3.* **290.**—(1.) Causes or matters which would, previously to the commencement of the Hongkong Code of Civil Procedure, have been heard by the Court in its equitable jurisdiction shall be tried by the Court without a jury, unless the Court otherwise orders.

Ib. r. 4. (2.) The Court may, if it appears desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which, previously to the commencement of the Hongkong Code of Civil Procedure, could, without any consent of parties, have been tried without a jury.

Ib. r. 5. (3.) The Court may direct the trial without a jury of any cause, matter, or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot, in the opinion of the Court, conveniently be made with a jury.

Order for trial with jury. *Ib. r. 6.* **291.** In any other cause or matter, on the application of any party thereto for a trial by the Court with a jury of the cause or matter or of any issue of fact, an order shall be made for such trial accordingly.

Mode of trial in cases not expressly provided for. *Ib. r. 7.* **292.** In every cause or matter, unless under the provisions of the last preceding section a trial by the Court with a jury is ordered or under section 289 either party has signified a desire to have a trial by the Court with a jury, the mode of trial shall be by the Court without a jury: Provided that in any such case the Court may at any time order any cause, matter, or issue to be tried by the Court with a jury, or by the Court sitting with assessors, or by a referee with or without assessors.

Provision for different modes of trial for different questions. *Ib. r. 8.* **293.** Subject to the provisions of the last five preceding sections, the Court may, in any cause or matter, at any time or from time to time order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

Trial by the Full Court. *New.* **294.** In any case where an order might be made or has been made for a trial by the Court with or without a jury, the Chief Justice may order that such trial shall be by the Full Court with or without a jury, as the case may be.

Saving of existing statutes relating to juries. *H. K. Code,* s. 53 (7.) **295.** All the existing statutes relating to juries shall be deemed to continue in full force and effect so far as the same may not be inconsistent with any provision of this Code.

CHAPTER XII.

TRIAL.

Non-Attendance of Parties.

Default of appearance by both parties. *Ib. s. 61 (1.)* **296.** When a cause is called on for trial, if neither party appears, the Court may, if it thinks fit, strike the cause out of the trial paper.

Default of appearance by plaintiff. *Ib. s. 61(2.)* **297.** If the plaintiff does not appear but the defendant appears, the Court, on being satisfied that the plaintiff has received notice of trial, shall, unless it sees good reason to the contrary, strike the cause out of the trial paper, and make such order as to costs in favour of the defendant as may seem just.

298. If the plaintiff appears but the defendant does not appear, the Court shall, before trying the cause, inquire into the service of the writ of summons, of the statement of claim, and of notice of trial on the defendant.

Default of appearance by defendant.

H. K. Code,
s. 61 (3.)

299. If it is not satisfied as to the service on every party, the Court shall direct such further service to be made as it may think fit, and shall adjourn the trial of the cause for that purpose.

Adjournment for further service.

Ib. s. 61 (4.)

300. Where the defendant does not file a statement of defence, the plaintiff at the trial must open his case, and adduce evidence in support of it, and take such judgment as to the Court may seem just, and the defendant shall not be entitled to be heard at the trial, without the special leave of the Court, and then only to such extent and in such manner as the Court may permit.

Procedure where no statement of defence filed.

Ib. s. 33 (3.)

301. If it is satisfied that the defendant has been duly served with the writ of summons, the statement of claim, and notice of trial, the Court may proceed to try the cause notwithstanding the absence of the defendant, and may, on the evidence adduced by the plaintiff, give such judgment as may seem just. The Court, however, shall not be bound to do so, but may, if it thinks fit, order the trial to stand over to a further day, on such terms as may seem just, and direct fresh notice to be given to the defendant.

Trial *ex parte.*

Ib. s. 61 (5.)

302. In any case where the plaintiff has obtained leave to proceed *ex parte* for want of appearance to the writ of summons, and in all other cases where the Court tries a cause and judgment is given in the absence of and against any defendant, the Court may afterwards, if it thinks fit, on such terms as may seem just, set aside the judgment and re-try the cause, on its being established by evidence upon oath, to the satisfaction of the Court, that the defendant's absence was not wilful, and that he has a defence on the merits.

Re-trial of cause for absent defendant in certain cases.

Ib. s. 61 (6.)

303.—(1.) Where a cause has been struck out of the trial paper by reason of the absence of the plaintiff, the Court may, on the application of the defendant, made within seven days after such striking out, make an order for the plaintiff to show cause why a day should not be fixed for the peremptory trial of the cause; and, on the return to that order, if no sufficient cause is shown, the Court shall fix a day accordingly, with such notice of trial and on such other terms as may seem just.

Procedure where cause struck out for absence of plaintiff.

Ib. s. 61 (7.)

New.

(2.) If no such application is made, the cause may be restored, with leave of the Court.

(3.) On such leave being obtained, the cause shall be set down again at the bottom of the general trial list, and be transferred in its regular turn to the trial paper.

304. Where a cause has been once struck out, and has been a second time set down, and has come into the trial paper, and on the day fixed for the trial the plaintiff, having received due notice thereof, fails to appear when the cause is called on, the defendant shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him.

Default of appearance by plaintiff a second time.

H. K. Code,
s. 61 (8.)

O. 36 r. 32.

Order of Proceedings at Trial.

305. The order of proceedings at the trial of a cause shall be as follows:—

General order of proceedings at trial of cause.

H. K. Code,
s. 62 (1.)—
(10.)

- (1.) the plaintiff shall read the pleadings or state the substance thereof, as the Court may direct;
- (2.) the party upon whom the burden of proof lies shall begin; he shall address the Court and open his case;
- (3.) the party beginning shall then produce his evidence and examine his witnesses in chief;
- (4.) when the party beginning has concluded his evidence, he shall ask the other party if he intends to produce evidence (in which term is included evidence by affidavit or taken by commission or on deposition, and documentary evidence not already read or taken as read); if answered in the negative, he shall be entitled to sum up the evidence already given and comment thereon; but if answered in the affirmative, he shall wait for his general reply;
- (5.) when the party beginning has concluded his case, the other party shall be at liberty to address the Court, and to produce his evidence and examine his

witnesses in chief, and to sum up the evidence already given and comment thereon;

- (6.) if no evidence is produced by the latter party, the party beginning shall have no right to reply, unless he has been prevented from summing up his case by the statement of the other party of his intention to produce evidence;
- (7.) the case on both sides shall then be considered closed;
- (8.) if the party opposed to the party beginning produces evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may produce fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters;
- (9.) where evidence in reply is tendered and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the Court, and the party beginning shall be entitled to the general reply; and
- (10.) each witness after examination-in-chief shall be subject to cross-examination by the other party, and to re-examination by the party calling him, and after re-examination may be questioned by the Court, and shall not be recalled or further questioned except by leave of the Court.

Taking of notes of evidence.
H. K. Code, s. 62 (11.)

306. The Court shall take a note of the *vivâ voce* evidence, and shall put down the terms of any particular question or answer, if there appears to be any special reason for doing so.

Recording of remarks on demeanour of witness.
Indian Code, s. 188.

307. The Court may record on the notes of evidence such remarks as it thinks material respecting the demeanour of any witness while under examination.

Use of notes of evidence.
Nov.

308.—(1.) Any party to a cause shall be entitled, on application to the Registrar and on payment of the prescribed fee, to have an office copy of the notes of evidence taken in such cause or of any portion thereof.

(2.) On application by any other person and on reasonable cause being shown for such application, the Court may order that such person shall, on payment of the prescribed fee, have an office copy of the notes of evidence taken in such cause or of any portion thereof: Provided that, on granting any such application, the Court may impose such terms as to publication or other use of the said notes as the Court may think proper.

(3.) An office copy of the notes of evidence taken in any cause shall be admissible, saving all just exceptions, in the same or any other cause as evidence that *vivâ voce* evidence was given before the Court as therein appearing.

Taking of objection to evidence.
H. K. Code, s. 62 (13.), (14.)

309.—(1.) Any objection to evidence must be taken at the time when the question objected to is put, or, in case of documentary evidence, when the same is about to be put in, and must be argued and decided at the time.

(2.) Where a question put to a witness is objected to, the Court, unless the objection appears to be frivolous, shall take a note of the question and objection, if required by either party, and shall mention on the notes whether the question was allowed to be put or not, and the answer to it, if allowed.

Putting in of evidence by affidavit, etc.
Ib. s. 62 (15.)

310. Where any evidence is by affidavit, or has been taken by commission or on deposition, the party adducing the same may read and comment on it, either immediately after his opening or after the *vivâ voce* evidence on his part has been concluded.

Reading of documentary evidence.
Ib. s. 62 (16.)

311. Documentary evidence must be put in and read, or taken as read by consent.

Marking and disposal of document put in evidence.
Ib. s. 62 (17.)

312. Every document put in evidence shall be marked by the officer of the Court at the time, and shall be retained by the Court during the trial, and returned to the party who put it in, or from whose custody it came, immediately after the judgment, unless it is impounded by order of the Court.

313.—(1.) Where the evidence adduced at the trial varies substantially from the allegations of the respective parties in the pleadings, it shall be in the discretion of the Court to allow the pleadings to be amended, so as to make the pleadings correspond with the evidence.

Amendment of pleadings to correspond with evidence.
H. K. Code,
s. 62 (18),
(19.)

(2.) The Court may allow such amendment on such terms as to adjournment, costs, and other things as may seem just, so as to avoid surprise and injury to any party.

314. In an action for libel or slander, in which the defendant does not by his statement of defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published or as to the character of the plaintiff, without the leave of the Court, unless he has, seven days at least before the trial, furnished particulars to the plaintiff of the matters as to which he intends to give evidence.

Evidence in mitigation of damages in action for libel or slander.
O. 36 r. 37.

Incidental Powers of the Court.

315.—(1.) The Court may at the trial, without the consent of parties, direct a nonsuit or judgment for the plaintiff or defendant to be entered, or it may reserve any point of law, or direct judgment to be entered subject to a special case to be stated for the opinion of the Court.

Power of the Court to direct nonsuit, etc.
H. K. Code,
s. 65 (1.)-(4.)

(2.) Every such point of law so reserved and every such special case shall be heard before the Full Court.

(3.) The Court may order any such point of law so reserved to be set down for argument without any previous application.

(4.) The provisions of Chapter 8 shall, with the necessary modifications, apply to every such special case.

Withdrawal from and Settlement of Action.

316.—(1.) If the plaintiff, at any time before final judgment, satisfies the Court that there are sufficient grounds for permitting him to withdraw from the action, with liberty to bring a fresh action for the same cause of action, it shall be competent to the Court to grant such permission, on such terms as to costs or otherwise as may seem just.

Withdrawal of plaintiff from action.
Ib. s. 66 (1.)

(2.) In any such fresh action the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first action had not been brought.

(3.) If the plaintiff withdraws from the action without such permission, he shall be precluded from bringing a fresh action for the same cause of action.

317.—(1.) If an action is settled by mutual agreement or compromise, or if the defendant satisfies the plaintiff in respect of the subject-matter of the action, the agreement, compromise, or satisfaction shall be recorded, and the action shall be disposed of in accordance therewith.

Settlement of action by mutual agreement, etc.
Ib. s. 66 (2.), (3.)

(2.) Notice of such agreement, compromise, or satisfaction shall be given by the plaintiff, or, if a solicitor is employed, by his solicitor, to the Registrar, together with such particulars as may be required of him, within one week after the same has been made, and, in default thereof, the plaintiff or his solicitor, as the case may be, shall be deemed guilty of a contempt of Court, and shall be liable to be proceeded against and punished accordingly.

CHAPTER XIII.

EVIDENCE.

Evidence in General.

318. The existing rules of evidence shall continue in full force and effect so far as they are not modified by any provisions of this Code.

Continuance of existing rules of evidence, except as modified.
Ib. s. 54 (1.)

Evidence de bene esse.

319.—(1.) Where the circumstances of the case appear to the Court so to require, the Court may take the evidence of any witness or person at any time in the course of the proceedings in any cause before the trial of the cause, or may order that such evidence shall be taken by the Registrar or by any other person, and at any place.

Taking and use of evidence *de bene esse*.
Ib. s. 57 (1.), (2.)
O. 37 r. 5.

(2.) The evidence shall be taken, as nearly as may be, in the same way as evidence at the trial of an action, and then the note of the evidence shall be read over to the

witness and tendered to him for signature ; and if he refuses to sign it, the Court, or the Registrar, or such other person, as the case may be, shall add a note of his refusal, and the evidence may be used as if he had signed it.

Letter of request. *O. 37 r. 6 A.* 320. If in any case the Court so orders, there shall be issued a request to examine witnesses in lieu of a commission as provided for by any Ordinance for the time being in force relating to evidence.

Taking and use of evidence before action brought. *H. K. Code, s. 57 (3).* 321. Evidence may be taken in like manner, on the application of any person before action brought, where it is shown upon oath, to the satisfaction of the Court, that the person applying has good reason to apprehend that an action will be brought against him in the Court, and that some person, within the jurisdiction at the time of the application, can give material evidence respecting the subject of the apprehended action, but is about to leave the jurisdiction, or that from some other cause the person applying will lose the benefit of his evidence if it is not at once taken : Provided that the Court may, on granting such application, impose any terms or conditions with respect to the examination of any such witness and the admission of his evidence as to the Court may seem reasonable.

Order for attendance of person to produce document. *O. 37 r. 7.* 322. The Court may in any cause, at any stage of the proceedings, order the attendance of any person for the purpose of producing any document named in the order which the Court may think fit to be produced : Provided that no person shall be compelled to produce under any such order any document which he could not be compelled to produce at the trial.

Disobedience of order for attendance. *Ib. r. 8.* 323. Every person who wilfully disobeys any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and shall be liable to be proceeded against and punished accordingly.

Copy of pleadings for examiner. *Ib. r. 10.* 324. Where any person is ordered to be examined before any officer of the Court or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

Custody of deposition taken on examination. *Ord. No. 6 of 1855 s. 39.* 325. Where the examination of any witness is taken under the provisions hereinbefore contained, the deposition so taken shall be returned to and kept in the Registry ; and office copies of such deposition may be given out to any person interested who may apply for the same.

Report of examiner on examination, and proceedings thereon. *Ib. s. 40. O. 37 r. 17.* 326. Where any such examination is taken by the Registrar or by some other person, he may, and, if need be, he shall, make to the Court a special report with regard to such examination and the absence or conduct of any witness or other person thereon or relating thereto ; and the Court may direct such proceedings and make such order as upon the report it may think just.

Use of deposition taken on examination. *Ib. r. 18.* 327. Except where by this Code otherwise provided or directed by the Court, no deposition shall be given in evidence at the trial of the cause without the consent of the party against whom the same is offered, unless the Court is satisfied that the deponent—

- (1.) is dead ; or
- (2.) is beyond the jurisdiction of the Court ; or
- (3.) is unable from sickness or other infirmity to attend the trial,

in any of which cases the deposition, certified by the Court or under the hand of the person taking the examination, as the case may be, shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.

Affidavits.

Rules as to form and substance of affidavit. *H. K. Code, s. 56 (1)-(4). O. 38 rr. 7, 8.* 328.—(1.) Every affidavit used in the Court shall be in the English language.

(2.) It shall be drawn up in the first person, and shall be divided into paragraphs, numbered consecutively ; and each paragraph shall, as nearly as may be, be confined to a distinct portion of the subject.

(3.) It shall state the description and true place of abode of the deponent.

(4.) It shall contain, and contain only, a statement of facts and circumstances to which the witness swears, either on his own personal knowledge or from information which he believes to be true.

(5.) Where the belief in the truth of the matter of fact sworn to arises from information received from another person, the name of such person shall be stated.

329. Where there are any interlineations, alterations, or erasures, so that the affidavit proposed to be sworn is illegible or difficult to read, or is, in the judgment of the officer before whom it is proposed to be sworn, so written as to give any facility for being added to or in any way fraudulently altered, the officer may refuse to take the affidavit in its existing form, and may require it to be re-written in a clear, legible, and unobjectionable manner.

Re-writing of defective affidavit.
H. K. Code,
s. 56 (5.)

330. No affidavit having in the body or jurat thereof any interlineation, alteration, or erasure shall, without leave of the Court, be read or made use of in any matter depending in the Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

Alteration in affidavit.
O. 38 r. 12.

331. Any affidavit sworn before any judge, officer, or other person in the United Kingdom or in any British possession authorized to take affidavits, or before any commissioner duly authorized by the Supreme Court to take affidavits in the United Kingdom or in any British possession, may be used in the Court in all cases where affidavits are admissible.

Swearing of affidavit in the King's dominions, and use thereof.
H. K. Code,
s. 56 (6.)

332. Any affidavit sworn in any foreign parts out of His Majesty's dominions before a judge or magistrate, being authenticated by the official seal of the court to which he is attached or of such magistrate, or before a public notary or a British consular officer, may be used in the Court in all cases where affidavits are admissible.

Swearing of affidavit out of the King's dominions, and use thereof.
Ib. s. 56 (7.)

333. The fact that an affidavit purports to have been sworn in the manner prescribed by one of the last two preceding sections shall be *prima facie* evidence of the seal or signature, as the case may be, of any such court, judge, magistrate, commissioner, or other officer or person therein mentioned appended or subscribed to such affidavit, and of the authority of such court, judge, magistrate, commissioner, or other officer or person to administer oaths.

Presumption in favour of affidavit purporting to have been sworn abroad.
Ib. s. 56 (8.)

334. The Court may receive any affidavit sworn for the purpose of being used in any cause, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

Use of defective affidavit.
O. 38 r. 14.

335. An affidavit shall not be admitted by the Court which is proved to have been sworn before the person on whose behalf the same is offered, or before his solicitor, or before a partner or clerk of his solicitor.

Exclusion of affidavit sworn before party, etc.
H. K. Code,
s. 56 (10.)

336. A defective or erroneous affidavit may be amended and re-sworn, by leave of the Court, on such terms as to time, costs, or otherwise as may seem reasonable.

Re-swearing of defective affidavit.
Ib. s. 56 (11.)

337. Before an affidavit is used the original must be filed in the Registry; and the original, or an office copy thereof, shall alone be recognized for any purpose in the Court.

Filing and use of original affidavit.
Ib. s. 56 (12.)

Evidence at Trial.

338. The Court may, in its discretion, permit that the evidence in any cause, or as to any particular matter in a cause, be taken by affidavit, or that affidavits of any witnesses be read at the trial: Provided that every witness making an affidavit so received shall be liable to cross-examination in open Court, unless the Court directs the cross-examination to take place in any other manner.

Taking of evidence by affidavit.
Ib. s. 54 (2.)

Power to admit affidavit of person not cross-examined. *H. K. Code*, s. 55 (3).

339. The Court may, in its discretion, if the interests of justice appear absolutely so to require, admit an affidavit in evidence although it is shown that the party against whom the affidavit is offered in evidence has had or will have no opportunity of cross-examining the person who has made the affidavit.

Requirement of order of trial under the provisions hereinbefore contained, except in pursuance of an order of the Court obtained on summons before trial, unless the Court thinks fit under the circumstances otherwise to direct, on such terms as may seem just.

340. No affidavit of any witness shall be read at the trial under the provisions hereinbefore contained, except in pursuance of an order of the Court obtained on summons before trial, unless the Court thinks fit under the circumstances otherwise to direct, on such terms as may seem just.

Rules as to examination of witnesses. *Ib.* s. 55 (7)-(10.)

341.—(1.) If a witness is asked any question relating to a matter not relevant to the cause, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2.) No such question shall be asked unless the person asking it has reasonable grounds for believing that the imputation which it conveys is well founded.

(3.) The Court may forbid any question or inquiry which it regards as indecent or scandalous, although such question or inquiry may have some bearing on the questions before the Court, unless it relates to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

(4.) The Court shall forbid any question to a witness which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court to be needlessly offensive in form.

Admissibility in certain cases of evidence of witness given in former judicial proceeding. *Ib.* s. 58.

342. Where any person who might give evidence in any cause is dead, or insane, or unavoidably absent at the time when his evidence might be taken, or, for any reason considered sufficient by the Court, cannot appear to give evidence in the cause, the Court may, if it thinks fit, receive proof of any evidence given by him in any former judicial proceeding: Provided that the subject-matter of such former judicial proceeding was substantially the same as that of the existing cause, and that the parties to the existing cause were parties to it or bound by it, and in it had cross-examined or had an opportunity of cross-examining the witness of whose evidence proof is so to be given.

Use of evidence in subsequent proceedings. *O.* 37 r. 25.

343. All evidence taken at the trial of any cause may be used in any subsequent proceedings in the same cause.

Application of provisions as to trial, etc., to hearing. *New.*

344. The provisions of Chapters 12 and 13 shall, with the necessary modifications, apply in respect of any petition or matter and in respect of the hearing thereof.

CHAPTER XIV.

JUDGMENT.

Recording of verdict, etc. *H. K. Code*, s. 67 (1.)

345. When the cause is tried by the Court with a jury, the verdict shall be recorded and judgment shall be entered up by the Registrar as the Court may direct.

Pronouncement of judgment. *Ib.*

346.—(1.) When the cause is tried by the Court without a jury, the judgment shall be pronounced in open Court, unless the Court otherwise directs, or it may be read by the Registrar, if so ordered.

Indian Code, s. 199.

(2.) A Judge may pronounce a judgment written by his predecessor or colleague but not pronounced.

Reserved judgment. *H. K. Code*, s. 67 (2.)

347. If the judgment of the Court is reserved at the trial, parties to the action shall be summoned to hear judgment, unless the Court at the trial states the day on which judgment will be delivered, in which case no summons to hear judgment shall be issued.

Notice of judgment. *Ib.* s. 67 (3), (4.)

348.—(1.) All parties shall be deemed to have notice of any judgment if the same is pronounced at the trial or hearing of the cause or matter.

(2.) All parties duly served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

349. A minute of every judgment or order, whether final or interlocutory, shall be made by the Registrar or a Clerk of the Court, and every such minute shall have the same force and effect as a judgment or order of the Court: Provided that the Court may in any cause or matter, on the application of any party, order a formal judgment or order to be drawn up.

Minute of judgment or order and formal judgment or order.
Ord. No. 8 of 1890.

350. Whenever the Court delivers a written judgment, the original or a copy thereof signed by the Judge shall be filed in the action or other proceeding.

Filing of written judgment.
H. K. Code, s. 67 (10.)

351. When the action is for a sum of money due to the plaintiff, the Court may, in the judgment, order interest, at such rate as the Court may think proper, to be paid on the principal sum adjudged from the commencement of the action to the date of the judgment, in addition to any interest adjudged on such principal sum for any period prior to the commencement of the action; and further interest, at such rate as may for the time being be fixed by the Court, shall be recoverable on the aggregate sum so adjudged, from the date of the judgment to the date of payment.

Rules as to awarding of interest in judgment.
Ib. s. 67 (6.)

352. In any judgment for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest thereon, and that, in default of payment of any instalment as and when due, execution may issue for the payment of the balance of the amount then remaining due.

Payment of judgment debt by instalments.
Ib. s. 67 (7.)

353. In any case in which the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract, or agreement, it shall be lawful for the Court, if it thinks fit, to award damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court may direct.

Power to award damages in addition to or in substitution for injunction, etc.
Ord. No. 3 of 1861 s. 1.

354.—(1.) In any action in which it appears to the Court that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, the Court may direct that the amount for which final judgment is to be signed shall be ascertained by the Registrar or by such other person as the Court may appoint.

Inquiry for ascertaining amount of damages in certain cases.
Ord. No. 6 of 1855 s. 79.

(2.) Under any such direction the attendance of witnesses and the production of documents before the Registrar or such other person may be compelled by *subpœna*.

(3.) It shall be lawful for the Registrar or such other person to adjourn the inquiry from time to time, as occasion may require.

(4.) The Registrar or such other person shall indorse on the rule or order for referring the amount of damages to him the amount found by him, and shall deliver the rule or order, with such indorsement, to the plaintiff; and such and the like proceedings may thereupon be had, as to taxation of costs, signing judgment, and otherwise, as on the finding of a jury.

355. In any action where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or of damages.

Sum of money to be awarded generally.
Ib. s. 80.

356.—(1.) If the defendant has been allowed to set off any demand against the claim of the plaintiff, the judgment 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 shall appear to be due to either party.

Judgment in case of set-off and counterclaim for money.
H. K. Code, s. 67 (8.)

(2.) Similar provisions shall apply in the case of a counterclaim.

(3.) The judgment of the Court with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate action against the plaintiff.

357. Every judgment made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment, within which the act is to be done, and on the copy of

Indorsement to be made on judgment requiring act

to be done within limited time. *O. 41 r. 5.* the judgment which is served on the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, namely,—

“If you, the within-named *C. D.*, neglect to obey this judgment by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the said judgment.”

Order of the Court.

Effect and enforcement of order of the Court. *O. 42 r. 24. H. K. Code, s. 80.* **358.** Every order of the Court in any cause or matter shall have the same force and effect as a judgment of the Court, and may be enforced by and against all persons affected or bound thereby subject to the same rules and in the same manner as a judgment to the same effect.

CHAPTER XV.

COSTS.

General power of the Court as to costs. *I. s. 94 (1). O. 65 r. 1.* **359.** The costs of every action and of each particular proceeding therein, and of every proceeding before the Court, including the administration of an estate or trust, shall be in the discretion of the Court; and the Court shall have full power to award and apportion costs in any manner it may deem proper: Provided that nothing herein contained shall deprive any executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules acted upon in the equity jurisdiction of the Court previously to the commencement of the Hongkong Code of Civil Procedure: Provided, also, that where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Court for good cause otherwise orders.

Costs of issues in fact and in law. *Ib. r. 2.* **360.** Where issues in fact and in law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in fact and in law, shall, unless the Court otherwise orders, follow the event.

Definition of costs. *H. K. Code, s. 94 (2).* **361.** Under the denomination of costs are included the whole of the expenses reasonably incurred by either party on account of the action or other proceeding, and in enforcing the judgment or order made therein, such as the expense of summoning the parties and witnesses and of other process, and of procuring copies of documents, fees and costs of counsel and solicitor, fees and costs of special juries, charges of witnesses, and expenses of commissioners, either in taking evidence or in investigating accounts.

Taxation of costs in matters not provided for. *Ib. s. 94 (3).* **362.—(1.)** So far as the scale of Court fees and fees and costs of counsel and solicitor for the time being in use in the Court may be incomplete, all questions relating to the amount and reasonableness of such fees and costs shall be referred to the Registrar, who is hereby empowered to determine the same on taxation, either with or without reference to the said scale, having regard to the skill, labour, and responsibility involved, subject nevertheless to a review of such determination by way of summary application to the Court in Chambers.

(2.) The payment of the costs allowed on such taxation or review may be enforced in the same manner as if the same had been fixed by any general rule or order of the Court.

Giving of security for costs. *Ib. s. 94 (4).* **363.—(1.)** The Court may, if in any case it thinks fit, require any party to an action or other proceeding, either at the commencement or at any time during the progress thereof, to give security for costs; and, in the case of a plaintiff, may stay proceedings until such security has been given.

O. 65 r. 6 A. (2.) A plaintiff ordinarily resident out of the jurisdiction may be required to give security for costs, although he may be temporarily resident within the jurisdiction.

Ib. r. 6. (3.) The security shall be of such amount, and be given at such times, and in such manner and form, as the Court may direct.

Ib. r. 7. (4.) Where a bond is to be given as security, it shall, unless the Court otherwise directs, be given to the party or person in whose favour the security is ordered to be given.

Effect of failure of **364.—(1.)** In the event of a plaintiff who has been required to give security for costs not giving it within the

time fixed for that purpose, the Court may dismiss the action unless the plaintiff is permitted to withdraw from the action or shows good cause why such time should be extended, in which case the Court may extend it.

plaintiff to give security for costs. *Indian Code*, s. 381.

(2.) Where an action is dismissed under this section, the plaintiff may apply to the Court 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 giving the security within the time fixed for that purpose, the Court may set aside the dismissal, on such terms as to security, costs, or otherwise as it may think fit.

(3.) The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

365. The Court may direct that the costs payable to one party by another shall be set off against a sum which is admitted or is found in the action or other proceeding to be due from the former to the latter.

Set-off for costs. *Ib.* s. 221.

366. Unless the Court otherwise orders, interest on costs, at such rate as may for the time being be fixed by the Court, shall be recoverable as costs from the date of judgment to the date of payment.

Interest on costs. *New.*

367. The Court may in any case direct that costs, with or without interest, shall be paid out of or charged upon the subject-matter of the action or other proceeding.

Payment of costs out of subject-matter. *Indian Code*, s. 222.

368.—(1.) In every case where costs would be recoverable by or from a private party, they shall be recoverable by or from the Crown.

Costs payable by or to the Crown, etc.

(2.) All Crown fees payable under this Code or under any Ordinance relating to the Court, and all costs payable by or to the Crown (except in Admiralty cases), shall be paid in current dollars only.

Ord. No. 4 of 1857 s. 3.
Ord. No. 3 of 1858 s. 16.

CHAPTER XVI.

EXECUTION.

Investigation as to Property of Judgment Debtor.

369.—(1.) Where a judgment directing payment of money remains wholly or in part unsatisfied, (whether a writ of execution has issued or not,) the judgment creditor may apply to the Court for a summons, requiring the judgment debtor to appear before the Court and be examined respecting his ability to make the payment directed; and the Court shall, unless it sees good reason to the contrary, issue such summons.

Summons to judgment debtor to appear and be examined as to his ability to pay judgment debt, and proceedings thereon. *H. K. Code*, s. 69.

(2.) On the appearance of the judgment debtor, he may be examined upon oath by or on behalf of the judgment creditor, and by the Court, with respect to his ability to make the payment directed, and for the discovery of property applicable to such payment, and as to the disposal which he may have made of any property.

(3.) The judgment debtor shall be bound to produce, upon oath or otherwise, as the Court may think fit, all books, papers, and documents in his possession or power relating to property applicable to such payment.

(4.) Whether the judgment debtor so appears or not, the judgment creditor and all other witnesses whom the Court thinks requisite may be examined upon oath or otherwise, as the Court may think fit, respecting the matters aforesaid.

(5.) The Court may, if it thinks fit, adjourn the hearing of the summons from time to time, and require from the judgment debtor such security for his appearance at the adjourned hearing as may seem proper, and, in default of his finding security, may, by warrant, commit him to prison, there to remain until the adjourned hearing, unless sooner discharged.

(6.) The Court may, on such investigation as aforesaid, make any interim order for the protection of any property applicable to the payment directed as it may think expedient.

Modes of enforcing Judgment.

370. If the judgment is for immovable property, the party who has obtained the judgment shall be put in possession of the property, if necessary, by the Bailiff.

Judgment for immovable property. *Ib.* s. 70 (1.)

Judgment for money. *H. K. Code, s. 70 (3.)* **371.** If the judgment is for money, it may be enforced by the imprisonment of the party against whom it has been given, or by the attachment and sale of his property, or by both imprisonment and attachment and sale, if necessary; and if such party is other than a defendant, the judgment may be enforced against him in the same manner as a judgment may be enforced against a defendant.

Judgment for money against representative of deceased person. *Ib. s. 70 (5.)* **372.** If the judgment is against a party as the representative of a deceased person, and such judgment is for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property, or, if no such property can be found and the defendant fails to satisfy the Court that he has duly applied such property of the deceased person as may be proved to have come into his possession, the judgment may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the judgment had been against him personally.

Judgment for specific movable or for specific performance of contract or act. *Ib. s. 70 (2.)* **373.** If the judgment is for any specific movable or for the specific performance of any contract or other particular act, it may be enforced by the seizure, if practicable, of the specific movable and the delivery thereof to the party to whom it has been adjudged, or by imprisonment of the party against whom the judgment has been given, or by attaching his property and keeping the same under attachment until the further order of the Court, or by both imprisonment and attachment, if necessary; or, if alternative damages have been awarded, by levying such damages in the mode provided for the execution of a judgment for money.

Judgment for execution of deed or indorsement of negotiable instrument. *Ib. s. 70 (4.)* **374.** If the judgment is for the execution of a deed, or for the indorsement of a negotiable instrument, and the party ordered to execute or indorse such deed or instrument refuses or neglects to do so, any party interested in having the same executed or indorsed may prepare a deed or indorsement of the instrument in accordance with the terms of the judgment and tender the same to the Court for execution, upon the proper stamp, if any, required by law, and the execution or indorsement thereof by the Registrar shall have the same effect as the execution or indorsement thereof by the party ordered to execute or indorse.

Case of surety for performance of judgment. *Ib. s. 70 (6.)* **375.** Where a person has become liable as surety for the performance of a judgment or of any part thereof, the judgment may be executed against him to the extent to which he has rendered himself liable, in the same manner as a judgment may be enforced against a judgment debtor.

Order for or against person not party. *O. 42 r. 26.* **376.** Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

General Rules relating to Execution.

Description of property liable to attachment and sale in execution of judgment. *H. K. Code, s. 70 (7.)* **377.** The following property is liable to attachment and sale in execution of a judgment, namely, land, houses, goods, money, bank notes, cheques, bills of exchange, promissory notes, government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any public company or corporation, and all other property whatsoever, whether movable or immovable, belonging to the judgment debtor, and whether the same is held in his own name or by another person in trust for him or on his behalf.

Payment of moneys into Court. *Ib. s. 70 (8.)* **378.** All moneys payable under a judgment on which a writ of execution has been issued shall be paid into Court, unless the Court otherwise directs.

Period within which execution may issue. *O. 42 r. 22.* **379.** As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

Duration and renewal of writ. *Ib. r. 20.* **380.** A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court

be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked by the Registrar with the seal of the Court and with the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the Bailiff, signed by the party or his solicitor, and marked in like manner; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original issue thereof.

381. The production of a writ of execution, or of the notice renewing the same, purporting to be marked as in the last preceding section mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Evidence of renewal of writ.
O. 42 r. 21.

382. Upon any judgment for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs.

Separate writs for money recovered and for costs.
Ib. r. 18.

383. If there are cross-judgments between the same parties for the payment of money, execution shall be taken out by that party only who has obtained a judgment for the larger sum and for so much only as may remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the judgment for the larger sum as well as satisfaction on the judgment for the smaller sum, and, if both sums are equal, satisfaction shall be entered on both judgments.

Execution in case of cross-judgments for money.
H. K. Code, s. 72 (2).

384. In every case of execution the party entitled to execution may levy the costs, fees, and expenses of execution over and above the sum recovered.

Levying expenses of execution.
O. 42 r. 15.

385. All questions relating to the amount of any mesne profits which by the terms of the judgment may have been reserved for adjustment in the execution of the judgment or of any mesne profits or interest which may be payable in respect of the subject-matter of the action between the date of the institution of the action and the execution of the judgment, as well as all questions relating to sums alleged to have been paid in satisfaction of the judgment or the like, and all other questions arising between the parties to the action in which the judgment was given, and relating to the execution of the judgment, shall be determined by order of the Court.

Determination of questions as to mesne profits and other matters.
H. K. Code, s. 79 (8).

Immediate Execution.

386.—(1.) The Court may, at the time of giving judgment, on the verbal application of the party in whose favour the judgment is given, order immediate execution thereof without the issue of a writ of execution, except as to so much as relates to the costs, and that the judgment shall be executed as to the costs as soon as the amount thereof has been ascertained by taxation.

Power of the Court to order immediate execution.
Ib. s. 71.

(2.) In any such case the party obtaining the order for immediate execution shall, as soon thereafter as practicable, comply with the requirements of the next succeeding section.

Application for Execution in Ordinary Cases.

387.—(1.) Subject to the provisions of the last preceding section, when any party who has obtained a judgment is desirous of enforcing the same, he shall file in the Court a *præcipe* for a writ of execution.

Filing of *præcipe* for writ of execution.
Ib. s. 72 (1.)
O. 42 r. 12.
Schedule: Form No. 28.

(2.) The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment and of the order, if any, directing the execution to be issued, and the names of the parties against whom, or of the firm against whose property, the execution is to be issued; and shall be signed by or in the name of the solicitor of the party issuing it, or by the party issuing it, if he does so in person.

388. The Registrar, on receiving any application for execution containing the particulars hereinbefore mentioned, shall make a note of the application and of the date on which it is made.

Making note of application for execution.
H. K. Code, s. 72 (6.)

389. The Registrar may at any time take the direction of the Court as to any application for execution and in the meanwhile refuse to issue the writ.

Taking direction of the Court as to application.
Ib. s. 72 (7.)

Application for Leave to issue Execution.

Application for leave to issue execution in certain cases, and proceedings thereon.

H. K. Code,
s. 73.
O. 42 r. 23.

390.—(1.) In the following cases, namely,—

- (a.) where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b.) where a husband is entitled or liable to execution upon a judgment for or against his wife;
- (c.) where a party is entitled to execution upon a judgment of assets *in futuro*; and
- (d.) where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company,

the party alleging himself to be entitled to execution may apply to the Court for leave to issue execution accordingly.

(2.) The Court shall thereupon issue a notice to the person against whom execution is applied for, requiring him to show cause, within a limited period to be fixed by the Court, why the judgment should not be executed against him: Provided that no such notice shall be necessary in consequence of an interval of more than six years having elapsed since the judgment, if the application is made within one year from the date of the last order obtained on any previous application for execution: Provided, also, that no such notice shall be necessary in consequence of the application being against the legal representative of an original party, if, on a previous application for execution against the same person, the Court has ordered execution to issue against him.

(3.) When such notice is issued, if the person to whom it is issued does not appear, or does not show sufficient cause, to the satisfaction of the Court, why the judgment should not be forthwith executed, the Court may, if it is satisfied that the party applying is entitled to execution, order the judgment to be executed accordingly. If the person to whom the notice is issued appears and offers any objection to the execution of the judgment, the Court shall make such order as in the circumstances of the case may seem just.

Application for leave to issue execution by one of several persons entitled.

Indian Code,
s. 231.

391.—(1.) If a judgment has been given jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply to the Court for leave to issue execution on the whole judgment for the benefit of them all, or, where any of them has died, for the benefit of the survivors and of the representative in interest of the deceased person.

(2.) If the Court grants such leave, it shall make such order as it may think fit for protecting the interests of the persons who have not joined in the application.

Stay of Execution.

Staying execution on ground of new facts.

O. 42 r. 27.

392. No proceeding by *auditâ querelâ* shall hereafter be used; but any judgment debtor may apply to the Court for a stay of execution or other relief against such judgment, on the ground of facts which have arisen too late to be pleaded; and the Court may give such relief and on such terms as may be just.

Staying execution on previous judgment where action pending between same parties.

H. K. Code,
s. 72 (3.)

393. Whenever an action is pending in the Court against a party who has obtained a previous judgment of the Court by the person against whom the judgment was given, the Court may, if it appears just and reasonable to do so, stay execution of the judgment, either absolutely or on such terms as may seem just, until judgment has been given in the pending action.

Issue of Execution.

Issue and date of writ.

Ib. s. 74.

394.—(1.) On the application of the person who has obtained any judgment, the Registrar shall, subject to the provisions of this Code, issue the proper writ for the execution of the judgment.

O. 42 r. 14.

(2.) Every writ of execution shall bear date of the day on which it is issued.

Order of issue of writs.

H. K. Code,
s. 72 (8.)

395. All writs of execution shall be issued in the order of application for the same, unless the Court otherwise directs.

Execution of Judgment for Immovable Property.

Procedure where resist-

396.—(1.) If, in the execution of a judgment for immovable property, the Bailiff is resisted or obstructed by

any person, the person who has obtained the judgment may apply to the Court at any time within one month from the time of such resistance or obstruction.

(2.) The Court shall thereupon fix a day for investigating the complaint, and shall summon the person against whom the complaint is made to answer the same.

(3.) If on the investigation it appears to the Court that the resistance or obstruction was occasioned by the judgment debtor or by some person at his instigation, on the ground that the property is not included in the judgment or on any other ground, the Court shall inquire into the matter of the complaint, and shall make such order as in the circumstances of the case may seem just.

(4.) If on the investigation the Court is satisfied that the resistance or obstruction complained of was without any just cause, and that the person who has obtained the judgment is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the judgment, by the judgment debtor or by some person at his instigation, the Court may, at the instance of the person who has obtained the judgment and without prejudice to any proceedings to which the judgment debtor or such other person may be liable for such resistance or obstruction, commit the judgment debtor or such other person to prison for such period, not exceeding thirty days, as may be necessary to prevent the continuance of such resistance or obstruction.

(5.) If on the investigation it appears to the Court that the resistance or obstruction complained of was occasioned by any person, other than the judgment debtor, claiming *bonâ fide* to be in possession of the property on his own account or on account of some person other than the judgment debtor, the claim shall be numbered and registered as an action between the person who has obtained the judgment as plaintiff and the claimant as defendant; and the Court shall, without prejudice to any proceedings to which the claimant may be liable for such resistance or obstruction, proceed to investigate the claim in the same manner and with the like powers as if an action for the property had been brought by the person who has obtained the judgment against the claimant, and shall make such order for staying execution of the judgment, or for executing the same, as in the circumstances of the case may seem just.

397.—(1.) If any person other than the judgment debtor is dispossessed of any immovable property in execution of a judgment, and such person disputes the right of the person who has obtained the judgment to dispossess him of such property under the judgment on the ground that the property was *bonâ fide* in his possession on his own account, or on account of some person other than the defendant, and that it is not included in the judgment, or, if it is included in the judgment, that he was not a party to the action in which the judgment was given, he may apply to the Court within one month from the date of such dispossession.

(2.) If, after such investigation of the facts of the case as it may think proper, it appears to the Court that there is probable cause for making the application, the application shall be numbered and registered as an action between the applicant as plaintiff and the person who has obtained the judgment as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if an action for the property had been brought by the applicant against the person who has obtained the judgment.

398. The decision of the Court under the provisions contained in either of the last two preceding sections shall be given in a summary manner and shall be of the same force and effect as a judgment in an ordinary action; and no fresh action shall be entertained between the same parties or persons claiming under them in respect of the same cause of action.

Execution of Judgment for Money by Attachment of Property other than Debts.

399. If the judgment is for money, and the amount thereof is to be levied from the property of the judgment debtor, the Court shall cause the property to be attached in the manner hereinafter prescribed.

ance is offered to execution of judgment for immovable property.
H. K. Code, s. 75. (1.)—
(4.)
Schedule :
Form No. 29.

Procedure where person other than judgment debtor disputes right to dispossess him of immovable property under judgment.
Ib. s. 75 (5.)

Effect of decision under ss. 396, 397.
Ib. s. 75 (6.)

Levy of execution on judgment for money.
Ib. s. 76 (1.)
Schedule :
Form No. 30.

- Attachment of movable property. *H. K. Code*, s. 76 (2), (3.)
Schedule: Form No. 31.
- 400.**—(1.) Where the property consists of movable property in the possession of the judgment debtor, the attachment shall be made by actual seizure, and the Bailiff shall keep the same in his custody, and shall be responsible for the due custody thereof.
- (2.) Where the property consists of movable property to which the judgment debtor is entitled subject to a lien or right of some other person to the immediate possession thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the judgment debtor or to any other person.
- Attachment of immovable property. *Ib.* s. 76 (4.)
Schedule: Form No. 32.
- 401.** Where the property consists of immovable property or any interest therein, either at law or in equity, the attachment shall be made by a written order prohibiting the judgment debtor from alienating the property by sale, gift, or in any other way, and all other persons from receiving the same by purchase, gift, or in any other way.
- Attachment of shares in public company. *Ib.* s. 76 (5.)
- 402.** Where the property consists of shares in any public company or corporation, the attachment shall be made by a written order prohibiting the person in whose name the shares are standing from making any transfer of the shares or receiving payment of any dividends thereon, and the manager, secretary, or other proper officer of the company or corporation from permitting any such transfer or making any such payment, until the further order of the Court.
- Attachment of negotiable instrument. *Ib.* s. 76 (7.)
- 403.** Where the property consists of a negotiable instrument, the attachment shall be made by actual seizure, and the Bailiff shall bring the same into Court, and such instrument shall be held subject to the further order of the Court.
- Attachment of property in custody of public officer. *Ib.* s. 76 (6.)
- 404.** Property in the custody or under the control of any public officer in his official capacity shall be liable to attachment with the consent in writing of the Attorney General, and in such case the order of attachment shall be served on such public officer.
- Attachment of property *in custodia legis*. *Ib.*
- 405.** Property *in custodia legis* shall be liable to attachment by leave of the Court, and in such case the order of attachment shall be served on the Registrar.
- Service of prohibitory order. *Ib.* s. 76 (8.)
- 406.**—(1.) In the case of movable property not in the possession of the judgment debtor, an office copy of the prohibitory order shall be delivered to or served on the person in possession of the property.
- (2.) In the case of immovable property or any interest therein, an office copy of the prohibitory order shall be delivered to or served on the defendant, and, if such property or interest is registered in the Land Office, shall be registered in the Land Office under Ordinance No. 3 of 1844, entitled "An Ordinance to provide for the Registration of Deeds, Wills, Judgments, and Conveyances affecting Real or Immovable Property in Hongkong."
- (3.) In the case of shares in any public company or corporation, an office copy of the prohibitory order shall be delivered to or served on the manager, secretary, or other proper officer of the company or corporation.
- Nullity of alienation, etc., of property after attachment. *Ib.* s. 76 (9.)
- 407.** After an attachment has been made by actual seizure or by prohibitory order as aforesaid, and, in the case of an attachment by prohibitory order, after it has been duly intimated and made known in manner aforesaid, any alienation without leave of the Court of the property attached, whether by sale, gift, or in any other way, and any transfer or payment of the shares or dividends to the judgment debtor or any other person, during the continuance of the attachment, shall be null and void.
- Payment of money or proceeds of property attached to judgment creditor. *Ib.* s. 76 (11.)
- 408.** In any case of attachment of property other than debts the Court may, at any time during the attachment, direct that any part of the property so attached which consists of money or bank notes, or a sufficient part thereof, shall be paid over to the party applying for execution of the judgment, and that any part of the property so attached which does not consist of money or bank notes shall, so far as may be necessary for the satisfaction of the judgment, be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party.
- Appointment of manager
- 409.**—(1.) Where the property attached consists of immovable property, the Court may appoint a manager of

such property, with power to collect the rents or other profits and receipts of such property, and to execute such deeds or other instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, and receipts towards the payment of the amount of the judgment and costs.

of immovable property attached. *H. K. Code, s. 76 (12.)*

(2.) In any case in which a manager is appointed under this section, such manager shall be bound to render from time to time due and proper accounts of his receipts and disbursements, as the Court may direct.

410.—(1.) Where the property attached consists of immovable property, if the judgment debtor satisfies the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of it or of any other property belonging to the judgment debtor, the Court may, on the application of the judgment debtor, postpone the sale of the property for such period as it may think fit, in order to enable the judgment debtor to raise the amount.

Raising of judgment debt by mortgage, etc., of immovable property attached. *Ib. s. 76 (12.) (13.)*

(2.) If the judgment debtor is absent from the Colony, and it appears, to the satisfaction of the Court, that the sale of any of his property which has been attached, consisting of immovable property or any interest therein, is objectionable, and that satisfaction of the judgment may be made within a reasonable period by a temporary alienation of such property, the Court may, of its own motion, instead of proceeding to a sale of such property, order that provision be made for the satisfaction of the judgment by mortgage of such property, and may authorize the Registrar, if necessary, to execute the mortgage deed in lieu of the judgment debtor and any other necessary parties, and may make such orders in relation to such mortgage as may be requisite to carry out this provision; and the execution of such mortgage deed by the Registrar shall have the same effect as the execution thereof by the judgment debtor and any other necessary parties.

411. If in any case the amount of the judgment, with all costs, charges, and expenses incurred by the attachment, is paid into Court, or if satisfaction of the judgment is otherwise made, the attachment shall be withdrawn; and such steps shall be taken as may be necessary for staying further proceedings in execution of the judgment.

Withdrawal of attachment on satisfaction of judgment. *Ib. s. 76 (14.)*

Execution of Judgment for Money by Attachment of Debts.

412.—(1.) The Court may, on the *ex parte* application of any person who has obtained a judgment for money, either before or after any oral examination of the judgment debtor, and upon an affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor and is within the jurisdiction, order that all debts due or accruing from such third person (hereafter in this Chapter called the garnishee) to the judgment debtor shall be attached to answer the judgment.

Order for attachment of debts due to judgment debtor. *O. 45 r. 1. Schedule: Forms Nos. 33 and 34.*

(2.) By a subsequent order it may be ordered that the garnishee shall appear before the Court to show cause why he should not pay to the person who has obtained the judgment the debt due or accruing from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

413. Service of an order that debts due or accruing to a judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court may direct, shall bind such debts in the hands of the garnishee.

Effect of service of order of attachment. *Ib. r. 2.*

414.—(1.) On such service or notice, the garnishee may forthwith pay into Court the amount due from him to the judgment debtor or an amount equal to the judgment.

Payment into Court by garnishee. *H. K. Code, s. 76 (10.)*

(2.) On such payment being made, the Court may make such order as it may think proper for the disposal of the amount paid into Court.

415. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, the Court may order execution to issue, and it may issue accordingly,

Issue of execution against garnishee. *O. 45 r. 3. Schedule: Form No. 35.*

without any previous writ or process, to levy the amount due from the garnishee or so much thereof as may be sufficient to satisfy the judgment.

Trial of question of liability of garnishee. *O. 45 r. 4.*

416. If the garnishee disputes his liability, the Court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability shall be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Claim or lien of third person or on debt, and proceedings thereon. *Ib. rr. 5, 6.*

417.—(1.) Where in any proceeding to obtain an attachment of a debt it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that some third person has a lien or charge upon it, the Court may order such third person to appear and state the nature and particulars of his claim upon such debt.

(2.) After hearing the allegations of any third person under such order, and of any other person whom, by the same or any subsequent order, the Court may order to appear, or in case of such third person not appearing when ordered, the Court may order execution to issue to levy the amount due from the garnishee or so much thereof as may be sufficient to satisfy the judgment, or any issue or question to be tried or determined according to the last preceding section, and may bar the claim of such third person, or make such other order as the Court may think fit, on such terms, in all cases, with respect to the lien or charge, if any, of such third person, and to costs, as the Court may think just.

Effect of payment by or execution on garnishee. *Ib. r. 7.*

418. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor as to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

Payment of proceeds of debts attached to judgment creditor. *H. K. Code, s. 76 (11.)*

419. In any case of attachment of debts the Court may direct that the debts so attached shall, so far as may be necessary to satisfy the judgment, be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to the judgment creditor.

Appointment of manager of debts attached. *Ib. s. 76 (12.)*

420.—(1.) In any case of attachment of debts the Court may appoint a manager of such debts, with power to sue for such debts and to execute such deeds or other instruments in writing as may be necessary for the purpose, and to pay and apply the proceeds of such debts towards the payment of the amount of the judgment and costs.

(2.) In any case in which a manager is appointed under this section, such manager shall be bound to render from time to time due and proper accounts of his receipts and disbursements, as the Court may direct.

Keeping of Debt Attachment Book. *O. 45 r. 8.*

421. There shall be kept by the Registrar a Debt Attachment Book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person on application to the Registrar and on payment of the prescribed fee.

Costs of proceedings for attachment. *Ib. r. 9.*

422. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court.

Claim to Attached Property.

Investigation of claim to, or objection offered against the sale of, any movable or immovable property which has been attached in execution of a judgment or under any order for attachment made before judgment, as not liable to be sold in execution of the judgment, the Court shall, subject to the proviso hereinafter contained, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the action. *H. K. Code, s. 77.*

423.—(1.) In the event of any claim being preferred to, or objection offered against the sale of, any movable or immovable property which has been attached in execution of a judgment or under any order for attachment made before judgment, as not liable to be sold in execution of the judgment, the Court shall, subject to the proviso hereinafter contained, proceed to investigate the same with the like powers as if the claimant had been originally made a defendant to the action.

(2.) If on the investigation it appears to the Court that the property was not in the possession of the judgment debtor or of some person in trust for him, or in the occupancy of some person paying rent to him, at the time when the property was attached, 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, the Court shall make an order for releasing the property from attachment.

(3.) If on the investigation it appears to the Court that the property was in the possession of the judgment debtor on his own account or as his own property and not on account of or in trust for any other person, or was in the possession of some person in trust for him, or in the occupancy of some person paying rent to him, at the time when the property was attached, the Court shall disallow the claim. The party against whom such order of disallowance is made shall be at liberty to bring an action to establish his right at any time within three months from the date of the order.

(4.) Any such claim or objection shall be made at the earliest opportunity, by notice in writing filed in the Registry and supported by affidavit; and if the property to which the claim or objection applies has been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation: Provided that no such investigation shall be made if it appears that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice, and in such case the claimant shall be left to prosecute his claim, if he thinks fit, by an action in the ordinary way.

424. Where movable property has been taken in execution under the process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the property by way of security for debt, the Court may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

Power to order sale of movable property taken in execution and claimed by third party.
O. 57 r. 12.

425.—(1.) Where a claim is made to or in respect of any movable property taken in execution under the process of the Court it shall be in writing, and upon the receipt of the claim the Bailiff shall forthwith give notice thereof to the execution creditor, and the execution creditor shall, within four days after receiving the notice, give notice to the Bailiff that he admits or disputes the claim.

Giving of notice by Bailiff of claim to movable property taken in execution.
Ib. r. 16.

(2.) If the execution creditor admits the claim, and gives notice as directed by this section, he shall only be liable to the Bailiff for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

426. When the execution creditor has given notice to the Bailiff that he admits the claim, the Bailiff may thereupon withdraw from possession of the property claimed, and may apply for an order protecting him from any action in respect of the seizure and possession of the property, and the Court may make any such order as may be just and reasonable in respect of the same: Provided that the claimant shall receive notice of such intended application, and, if he desires it, may attend the hearing of the same, and if he attends, the Court may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

Withdrawal by Bailiff on admission of claim.
Ib. r. 16A.

Sale of Property in Execution of Judgment.

427. Every sale in execution of a judgment shall be made under the direction of the Registrar, and shall be conducted according to such orders, if any, as the Court may make on the application of any party concerned, and shall be made by public auction: Provided that the Court may in any case authorize the sale to be made in such other manner as it may deem advisable.

Conduct and mode of sale in execution
H. K. Code, s. 78 (1.)

428. At any time within ten days from the date of sale of any immovable property in execution of a judgment, application may be made to the Court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no such sale shall be set aside on the ground of such irregularity unless the applicant proves, to the satisfaction of the Court, that he has sustained substantial injury by reason of such irregularity.

Application to set aside sale of immovable property for irregularity.
Ib. s. 78 (2.)

429.—(1.) If no such application is made, the sale shall be deemed absolute.

Sale of immovable property made absolute, confirmed, or set aside.
Ib. s. 78 (3.)

(2.) If such application is made and the objection is disallowed, the Court shall make an order confirming the sale.

(3.) If such application is made and the objection is allowed, the Court shall make an order setting aside the sale for irregularity.

Repayment of deposit, etc., when sale of immovable property is set aside.
H. K. Code, s. 78 (4.)

430. Whenever a sale of immovable property is set aside for irregularity, the purchaser shall be entitled to receive back any money deposited or paid by him on account of such sale, with or without interest, to be paid by such parties and in such manner as it may appear proper to the Court to direct.

Granting of certificate to purchaser when sale of immovable property becomes absolute, and effect thereof.
Ib. s. 78 (5.)

431.—(1.) After a sale of immovable property has become absolute in manner aforesaid, the Court shall grant a certificate to the person who has been declared the purchaser at such sale to the effect that he has purchased the right, title, and interest of the judgment debtor in the property sold.

(2.) Such certificate shall be liable to the same stamp duty as an assignment of the same property, and when duly stamped as aforesaid shall be taken and deemed to be a valid transfer of such right, title, and interest, and may be registered in the Land Office under Ordinance No. 3 of 1844, entitled "An Ordinance to provide for the Registration of Deeds, Wills, Judgments, and Conveyances affecting Real or Immovable Property in Hongkong."

Delivery to purchaser of immovable property sold in execution.
Ib. s. 78 (8.), (9.)

432.—(1.) Where the property sold consists of immovable property 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 the property, the Court shall, on the application of the purchaser, order delivery of the property to be made by putting the party to whom the property has been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if necessary, by removing any person who may refuse to vacate the same.

(2.) Where the property sold consists of immovable property in the occupancy of any other person entitled to occupy the same, 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 or at the Court House.

Procedure where resistance is offered to purchaser of immovable property sold in execution.
Ib. s. 78 (13.), (14.)

433.—(1.) If the purchaser of any immovable property sold in execution of a judgment is, notwithstanding the order of the Court, resisted or obstructed in obtaining possession of the property, the provisions of this Chapter relating to resistance or obstruction to the execution of a judgment for immovable property shall be applicable in the case of such resistance or obstruction.

(2.) If it appears that the resistance or obstruction to the delivery of possession was occasioned by any person other than the judgment debtor claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if, in the delivery of possession to the purchaser, any such person claiming as aforesaid is dispossessed, the Court, on the complaint of the purchaser or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession, as the case may be, shall inquire into the matter of the complaint and make such order as may be proper in the circumstances of the case.

(3.) The person against whom any such order is made shall be at liberty to bring an action to establish his right at any time within three months from the date of the order.

Delivery to purchaser of movable property sold in execution.
Ib. s. 78 (6.), (7.)

434.—(1.) Where the property sold consists of movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

(2.) Where the property sold consists of movable property to which the judgment debtor is entitled subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall, as far as practicable, be made by the Bailiff giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

435. Where the property sold consists of debts, not being negotiable instruments, or of shares in any public company or corporation, the Court shall, on the application of the purchaser, make an order prohibiting the judgment debtor from receiving the debts and his debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the shares are standing from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the manager, secretary, or other proper officer of the company or corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Prohibitory order in case of debts and shares sold in execution. *H. K. Code*, s. 78 (10.)

436. Where the property sold consists of a negotiable instrument of which actual seizure has been made, the same shall be delivered to the purchaser.

Delivery of negotiable instrument sold in execution.

437.—(1.) If the execution of a transfer by any person in whose name any share in a public company or corporation is standing, or the indorsement by any person of any negotiable instrument, or the execution by any person of any deed or other instrument relating to immovable property or any interest therein, is lawfully required to give effect to any sale in execution of a judgment, the Registrar, with the sanction of the Court, may—

Ib. s. 78 (11.)

Execution of transfer of share, etc.

Ib. s. 78 (12.)

(a.) execute such transfer; or

(b.) indorse such negotiable instrument; or

(c.) execute such deed or other instrument.

(2.) The execution of such transfer, the indorsement of such negotiable instrument, and the execution of such deed or other instrument by the Registrar shall have the same effect as the execution and the indorsement by the person whose execution or indorsement is so as aforesaid required.

(3.) Until the execution of such transfer or the indorsement of such negotiable instrument, the Court may, by order, appoint some person to receive any dividend or interest due in respect of any such share or negotiable instrument.

Execution of Judgment for Money by Imprisonment.

438. No person shall be imprisoned in execution of a judgment for a longer period than one year, or for a longer period than six months if the judgment is for the payment of money not exceeding five hundred dollars, or for a longer period than three months if the judgment is for the payment of money not exceeding one hundred dollars.

Duration of imprisonment for debt.

Ib. s. 79 (3.)

439. When a judgment debtor is committed to prison in execution of the judgment, the Court shall fix whatever monthly allowance it may think sufficient for his subsistence, not exceeding twenty-five cents per diem, which shall be paid by the person at whose instance the judgment has been executed to the Superintendent of the Gaol by monthly payments in advance, before the first day of each month, the first payment to be made for such portion of the current month as may remain unexpired before the judgment debtor is committed to prison.

Subsistence allowance to prisoner for debt.

Ib. s. 79 (1.)

440.—(1.) In case of the serious illness, of any person imprisoned in execution of a judgment, it shall be lawful for the Court, on the certificate of the surgeon of the gaol in which he is confined or of the chief medical officer of the Government, to make an order for the removal of the judgment debtor to the Government Civil Hospital, and for his treatment there under custody until further order.

Removal to hospital of prisoner for debt in case of serious illness.

Ib. s. 79 (2.)

(2.) In any such case the period of the judgment debtor's stay in hospital shall be counted as part of his term of imprisonment, and his subsistence money shall be paid as if no such order had been made.

441. Every person imprisoned in execution of a judgment shall be released at any time on the judgment being fully satisfied, or at the request of the person at whose instance the judgment has been executed, or on such person omitting to pay his subsistence money.

Release of prisoner for debt.

Ib. s. 79 (3.)

442. All sums paid by a plaintiff for the subsistence of a person imprisoned in execution of a judgment shall be added to the costs of the judgment and shall be recoverable by the attachment and sale of the property of the judgment debtor; but the judgment debtor shall not be

Recovery of amount of subsistence money.

Ib. s. 79 (4.)

detained in custody or arrested on account of any sum so paid.

Application of prisoner for debt for discharge, and proceedings thereon. *H. K. Code, s. 79 (5), (6).* **443.**—(1.) Any person imprisoned in execution of a judgment may at any time apply to the Court for his discharge.

(2.) The application shall contain a full account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself, or jointly with others, or by others in trust for him (except the necessary wearing apparel of himself and his family and the necessary implements of his trade), and of the places respectively where such property is to be found; and the application shall be signed by the applicant and verified by affidavit.

Schedule: Form No. 36. (3.) On the application being made, the Court shall cause the judgment creditor to be furnished with a copy thereof, and shall fix a reasonable period within which the judgment creditor may cause the whole or any part of such property to be attached and sold, or may appear on the hearing of the application and make proof that the judgment debtor's inability to satisfy the judgment is attributable to unjustifiable extravagance in living or that the judgment debtor, for the purpose of procuring his discharge without satisfying the judgment, has wilfully concealed property or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith.

Schedule: Form No. 37. (4.) If, after such investigation as it may think proper on the application, the Court is of opinion that the judgment debtor should be set at liberty, it shall make an order to that effect, but otherwise the Court shall retain the judgment debtor in prison, unless he has already been in prison on account of the judgment for the full term for which he is liable to imprisonment.

Effect of discharge of prisoner for debt. *Ib. s. 79 (7).* **444.** When any person imprisoned in execution of a judgment has been once discharged he shall not again be imprisoned on account of the same judgment, but his property shall continue liable, under the ordinary rules, to attachment and sale until the judgment is fully satisfied.

Committal for Disobedience to Judgment.

Granting of order on person disobeying judgment to show cause why he should not be punished. *Ib. s. 81 (1), (2).* **445.**—(1.) Where any person is guilty of wilful disobedience to a judgment, the person who has obtained the judgment shall be entitled to apply to the Court for an order directed to the person who has disobeyed the judgment to show cause why he should not be punished for the disobedience.

(2.) The Court, unless it sees good reason to the contrary, shall, on such application, make an order accordingly.

(3.) The Court shall not grant the order except on evidence upon oath or by affidavit establishing such a case as, if uncontradicted and unexplained, would justify the immediate committal of the person disobeying the judgment.

Service of order, etc. *Ib. s. 81 (3).* **446.** An office copy of the order and of the deposition or affidavit upon which the order was granted shall be served on the person to whom the order is directed.

Proceedings on return-day of order. *Ib. s. 81 (4).* **447.** On the return-day of the order, if the person to whom it is directed does not attend and does not establish a sufficient excuse for not attending, and if the Court is satisfied that the order has been duly served, or if such person attends and does not show cause, to the satisfaction of the Court, why he should not be punished for the disobedience, the Court may issue a warrant for his committal to prison.

Enlargement of time for return to order, and making of conditional order of committal. *Ib. s. 81 (5).* **448.** The Court may enlarge the time for the return to the order, or may, on the return of it and under circumstances which would strictly justify the immediate committal of the person guilty of the disobedience, direct that the warrant for his committal to prison shall issue only after a certain time and in the event of his continued disobedience at that time to the judgment in respect of which he has been guilty of disobedience.

Duration of detention of person committed. *Ib. s. 81 (6).* **449.** A person committed for disobedience to a judgment shall be liable to be detained in custody until he has obeyed the judgment in all things which are to be immediately performed, and given such security as the

Court may think fit to obey the other parts of the judgment, if any, at the future times thereby appointed, or, in case of his no longer having the power to obey the judgment, then until he has been imprisoned for such time or until he has paid such fine as the Court may direct.

450. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract is not complied with, the Court, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the mandamus, order, injunction, or judgment has been obtained, or by some other person appointed by the Court, at the cost of the disobedient party, and, upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct, and execution may issue for the amount so ascertained, and costs.

Power to order act directed to be done at expense of party refusing to do it. *O. 42 r. 30.*

451. Any judgment against a corporation which is wilfully disobeyed may, by leave of the Court, be enforced by sequestration against the corporate property, or by committal of the directors or other officers thereof, or by writ of sequestration against their property.

Enforcement of judgment against disobedient corporation. *Ib. r. 31.*

PART II.

SPECIAL ACTIONS AND PROCEEDINGS.

CHAPTER XVII. -

FOREIGN ATTACHMENT.

452. Proceedings by foreign attachment may be taken in the manner hereinafter prescribed in any action, provided that the cause of action arose within the jurisdiction.

Proceedings by foreign attachment. *H. K. Code, s. 82 (1.)*

453.—(1.) On the filing in Court by the plaintiff in any such action of an affidavit to the following effect, that is to say,—

Issue of writ of foreign attachment. *Ib. s. 82 (2).*

(a.) that the cause of action arose within the jurisdiction;

(b.) that the plaintiff has taken out a writ of summons against the defendant, but that the defendant is absent from the Colony or that there is probable cause to believe that the defendant is concealing himself to evade proceedings; and

(c.) that the defendant is beneficially entitled to movable property within the jurisdiction in the custody or under the control of any other person within the jurisdiction, or that such other person (hereafter in this Chapter called the garnishee) is indebted to the defendant, or that the defendant is beneficially entitled to immovable property, or to any interest therein, within the jurisdiction,

and on the giving of the bond hereinafter mentioned, the Registrar may issue a writ of general attachment against all the property, movable and immovable, of the defendant within the jurisdiction.

(2.) The writ shall be called a writ of foreign attachment, and shall be made returnable not less than fourteen days after the date thereof, except by special leave of the Court.

Schedule: Form No. 38.

454. Absence from the Colony shall, for the purpose of proceedings by foreign attachment, be taken to be absence for the time being, whether the defendant has ever been within the Colony or not.

Meaning of term "absence from Colony." *Ib. s. 82 (3.)*

455.—(1.) Before the writ shall issue the plaintiff or some person on his behalf shall enter into a bond, with one or more sufficient sureties to be approved by the Registrar, in a penal sum equal to twice the amount of the claim, or in any less sum by special leave of the Court, the condition of which said bond shall be that in case the defendant shall, at any time within the period hereinafter limited in that behalf, cause the writ to be set aside, or any judgment which may be given in the action to be reversed or varied, the plaintiff will pay to the defendant all such sums of money, damages, costs, and charges as the Court may order and award on account of or in relation to the action and the attachment, or either of them: Provided that the Court shall not award a larger amount of dam-

Giving of bond by plaintiff before issue of writ. *Ib. s. 82 (4.), (5.)*
Schedule: Form No. 39.

ages than it is competent to award in an action for damages, and such award shall bar any action for damages in respect of the action and attachment.

(2.) The bond shall be in such form and given to such person as the Court may, from time to time or in any particular case, approve and direct, and shall be entered into before the Registrar, and deposited in the Registry.

Power to the Court to order issue of writ before execution of bond. *H. K. Code, s. 82 (5).* **456.**—(1.) If in any case it is made to appear to the satisfaction of the Court, by affidavit or otherwise, that under the circumstances it is expedient that the writ should issue forthwith and before the bond has been entered into, the Court may order the writ to issue accordingly, on such terms as it may think fit, and by the same order shall limit the time, not exceeding seven days from the date of the issue of the writ, within which the bond must be entered into and deposited as aforesaid.

(2.) If default is made in complying with the requirements of the order within the time thereby limited, the Court may dissolve the writ, and thereupon may award damages and costs to the defendant in the manner hereinbefore provided in the case of a writ being set aside or a judgment in the action being reversed or varied.

Execution of writ against movable property. *Ib. s. 82 (6).* **457.** Every writ against movable property shall be executed by the Bailiff.

Priority of writs. *Ib. s. 82 (7).* **458.**—(1.) Where two or more writs issue at the suit of different plaintiffs, they shall take priority respectively according to the date and time at which they reach the hands of the Bailiff for execution.

New. (2.) No such writ shall take priority over a writ of execution in an action pending at the date of such writ of foreign attachment.

(3.) The Bailiff shall indorse on every such writ the date and time of the same coming to his hands for execution.

Attachment of property in custody of public officer. *H. K. Code, s. 82 (8).* **459.** Property in the custody or under the control of any public officer in his official capacity shall be liable to attachment with the consent in writing of the Attorney General, and in such case the writ shall be served on such public officer.

Attachment of property in *custodiâ legis*. *Ib.* **460.** Property in *custodiâ legis* shall be liable to attachment by leave of the Court, and in such case the writ shall be served on the Registrar.

Effect of service of writ on garnishee as regards movable property. *Ib. s. 82 (11).* **461.** From the time of the service on the garnishee of the writ, all property whatsoever within the jurisdiction, other than immovable property or any interest therein, to which the defendant mentioned in the writ is then beneficially entitled, whether solely or jointly with others, and which is in the custody or under the control of the garnishee, and all debts then due or accruing from the garnishee to the defendant, shall, to the extent of the defendant's interest therein, and subject to Crown debts, and to any *bonâ fide* prior title thereto or lien or charge thereon, and to the rights and powers of prior incumbancers, be attached in the hands of the garnishee to satisfy the claim of the plaintiff.

Execution of writ against immovable property. *Ib. s. 82 (9), (10).* **462.**—(1.) Where the defendant is beneficially entitled to immovable property or to any interest therein, a memorial containing a copy of the writ shall be registered in the Land Office under Ordinance No. 3 of 1844, entitled "An Ordinance to provide for the Registration of Deeds, Wills, Judgments, and Conveyances affecting Real or Immovable Property in Hongkong."

(2.) In case the writ is dissolved or the judgment in the action is satisfied, a certificate to that effect under the hand of the Registrar and the seal of the Court may be registered at the Land Office, and thereupon the memorial shall be deemed to have been cancelled.

(3.) The fees payable to the Land Office shall be for the registration of such memorial one dollar, and for the filing of such certificate one dollar, and no other fees shall be payable to the Land Office in respect thereof.

Effect of registration of memorial of writ on immovable property. *Ib. s. 82 (10).* **463.** From the time of the registration in the Land Office of the memorial of the writ, all immovable property within the jurisdiction, or any interest therein, to which the defendant mentioned in the writ is then beneficially entitled, whether solely or jointly with others, shall, to the extent of his interest therein, and subject to Crown debts, and to any *bonâ fide* prior title thereto or lien or charge

thereon, and to the rights and powers of prior incumbrancers, be attached to satisfy the claim of the plaintiff.

464. The Court may, at any time before judgment, on such grounds as it may deem sufficient, order any property, other than immovable property or any interest therein, attached under the writ to be sold in such manner as it may direct and the net proceeds to be paid into Court.

Sale of movable property attached under writ. *H. K. Code*, s. 82 (12.)

465. Any garnishee who, without the leave or order of the Court, at any time after the service of the writ and before the writ is dissolved,—

Punishment of garnishee disposing, without leave, of property attached. *Ib.* s. 82 (13.)

- (1.) knowingly and wilfully parts with the custody or control of any property attached in his hands ; or
- (2.) removes the same out of the jurisdiction of the Court ; or
- (3.) sells or otherwise disposes of the same ; or
- (4.) pays over any debt due by him to the defendant, excepting only to or to the use of the plaintiff,

shall pay such damages to the plaintiff as the Court may award, and shall further be deemed guilty of a contempt of Court and shall be liable to be proceeded against and punished accordingly : Provided that the Court shall not award a larger amount of damages than it is competent to award in an action for damages, and such award shall bar any action for damages in respect of the act done by the garnishee.

466. In any case where it is made to appear to the satisfaction of the Registrar, by affidavit or otherwise, that there is reasonable cause to believe that any property attached is in danger of being removed out of the jurisdiction or of being sold or otherwise disposed of, the Registrar may, by an order in writing, direct the Bailiff to seize such property and detain the same subject to the order of the Court ; and the Bailiff shall thereupon seize and detain such property accordingly.

Seizure of attached property in danger of being removed, etc. *Ib.* s. 82 (14.)

467. Notice of the issue of the writ shall be inserted twice in the Government Gazette and twice in some local newspaper, unless the Court shall, by reason of the defendant having entered an appearance or on any other ground, dispense with the publication of such notice.

Publication of notice of issue of writ. *Ib.* s. 82 (15.)

468. In any case where the place of residence of the defendant out of the jurisdiction is known, the Court may, if it thinks fit, on the application of the garnishee or of any friend or agent of the defendant, or of its own motion, and on such terms as it may deem reasonable, order that notice of the writ be served on the defendant out of the jurisdiction, and that further proceedings be stayed until the further order of the Court, but without prejudice to the attachment under the writ.

Service of notice of writ on defendant. *Ib.* s. 82 (16.)

469. After the issue of the writ, (but subject to the provisions of the last preceding section), the plaintiff may forthwith file his statement of claim, and, upon such day after the return of the writ as the Court may appoint, may proceed to establish his claim as in an ordinary action in which there has been due service of the writ of summons, and leave has been obtained to proceed *ex parte*.

Filing of statement of claim, and proceedings thereafter. *Ib.* s. 82. (17.)

470.—(1.) On the trial of the action the Court shall proceed to inquire and determine whether in fact the plaintiff's case is within the provisions of this Chapter, and whether the plaintiff has established his claim, and shall pronounce judgment accordingly ; and if the plaintiff obtains judgment, the Court may, at the same or any subsequent sitting, examine or permit the plaintiff to examine the garnishee or any other person, and determine what property, movable or immovable, is liable to attachment under the writ.

Proceedings at trial of action. *Ib.* s. 82 (18.)—(21.)

(2.) If the garnishee, either on such examination or by notice in writing filed in the Registry at any time after the attachment, disputes the liability of the property to attachment, the Court may order that any issue or question necessary for determining such liability shall be tried and determined in any manner in which any issue or question in an action may be tried and determined. On such examination and at such trial or determination the garnishee may be represented by counsel and solicitor.

(3.) The Court may, at the instance of any person interested in the inquiry or of its own motion, summon any person whom it may think necessary and examine him in relation to such property as aforesaid, and may

require the garnishee, as well as any person summoned as aforesaid, to produce all deeds and documents in his possession or power relating to such property.

(4.) If the plaintiff obtains judgment, the Court may, at the time of pronouncing judgment in favour of the plaintiff, or at any subsequent sitting, order that execution shall issue against all or any part of the property attached which the Court may have declared to be liable to satisfy the plaintiff's claim; and all the provisions of this Code relating to execution of judgment in an ordinary action shall apply to the execution so ordered.

(5.) If the plaintiff fails to obtain judgment, the Court shall thereupon dissolve the writ.

Attachment of ship in case of adverse claims to goods laden on board. *H. K. Code, s. 82 (22.)* **471.** Where there are two or more claimants to any goods laden on board of any ship, and the ship is attached in an action against the shipowner for the non-delivery of the goods, the Court may stay the proceedings on such terms as the Court may think proper, and order the goods to be landed and warehoused *in custodia legis*, without prejudice to the master's lien thereon, and may dissolve the attachment against the ship and make such orders as may be necessary for the determination of the rights of the claimants, on such terms as to security and other matters as may seem just.

Procedure where several claims to property attached. *Ib. s. 82 (23.)* **472.** Where there are two or more claimants to any property attached under a writ, or to any interest therein, the Court may, in its discretion, summon before it all the claimants, and may make such orders for the ascertaining of their respective rights and for the custody of the property in the meanwhile as it may think fit, either under this Chapter or under the provisions of this Code relating to claims to attached property or to interpleader proceedings.

Staying proceedings against garnishee. *Ib. s. 82 (24.)* **473.** The Court may stay proceedings in any action commenced against a garnishee under the provisions of this Chapter in respect of property attached in his hands, on such terms as may seem just.

Giving leave to defendant to defend action. *Ib. s. 82 (25.)* **474.** The Court, at any time before judgment, on being satisfied, by affidavit or otherwise, that the defendant has a substantial ground of defence, either wholly or in part, to the action on the merits, may give leave to the defendant to defend the action, without prejudice to the attachment under the writ.

Application by defendant to dissolve attachment. *Ib. s. 82 (26.)* **475.** The defendant may, at any time before any property attached in the action has been sold in satisfaction of the plaintiff's claim, apply to the Court, upon notice of motion, for an order to dissolve the writ as to the whole or any part of the property attached, on security being given to answer the plaintiff's claim, and the Court may make such order, either absolutely or on such terms as may seem just, and in the meanwhile may stay or postpone any sale.

Application by defendant to set aside judgment, etc. *Ib. s. 82 (27.)* **476.** The defendant may, at any time within twelve months from the date of the judgment, notwithstanding that the property attached, or any part thereof, may have been sold in satisfaction of the plaintiff's claim, apply to the Court, upon notice of motion, for an order to set aside the judgment and for the re-trial of the action and for leave to defend the same; and if it appears to the Court that the defendant had no notice or knowledge of the action and could not reasonably have made an earlier application to the Court, and that he had, at the time of the obtaining of the judgment, and still has, a substantial ground of defence, either wholly or in part, to the action on the merits, it shall be lawful for the Court to grant such order on such terms as may seem just.

Saving of rights of *bonâ fide* purchaser of property in case of dissolving of writ, etc. *Ib. s. 82 (28.)* **477.** The dissolving of any writ, or the reversal or setting aside of any judgment given under this Chapter or of any subsequent proceedings, shall not affect the title of any *bonâ fide* purchaser for valuable consideration of any property sold in satisfaction of the plaintiff's claim.

CHAPTER XVIII.

ACTION AGAINST THE GOVERNMENT.

Mode of preferring claim against **478.** Any claim against the Government of the Colony of the same nature as claims within the provisions of the Petitions of Right Act, 1860, of the Imperial Parliament,

may, with the consent in writing of the Governor, be preferred in the Court in an action instituted by the claimant as plaintiff against the Attorney General as defendant.

Government of Colony.
H. K. Code,
s. 83 (1.) 23 &
24 *Vict. c. 34.*

479. In any such case it shall not be necessary for the plaintiff to issue a writ of summons, but the action shall be commenced by the filing of a statement of claim and the service thereof on the Crown Solicitor.

Commence-
ment of
action.
H. K. Code,
s. 83 (2.)

480.—(1.) On the application of the Crown Solicitor, the Registrar shall deliver to him the original statement of claim for submission to the Governor.

Consent of
Governor,
and pro-
cedure
thereafter
Id. s. 83 (3.)

(2.) If the Governor grants his consent as aforesaid, such consent shall be indorsed on the statement of claim, which shall then be returned by the Crown Solicitor to the Registrar.

(3.) In such case the action may, subject to the provisions of this Chapter, proceed and be carried on under the ordinary procedure provided by this Code.

481. All other documents, notices, or proceedings in the action which, in an ordinary action, would be required to be served on the defendant shall be served on the Crown Solicitor.

Service of
documents in
action.
Id. s. 83 (4.)

482. Whenever in any such action judgment is given against the Government, no execution shall issue thereon, but a copy of the judgment, under the seal of the Court, shall be transmitted by the Court to the Governor.

Procedure
where judg-
ment given
against Gov-
ernment.
Id. s. 83 (5.)

CHAPTER XIX.

ACTION BY OR AGAINST FIRM, ETC.

483.—(1.) Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action.

Right and
liability of
partners to
sue and be
sued in firm
name, and
disclosure of
names of
partners.
O. 48 A r. 1.

(2.) Any party to an action may in such case apply by summons 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, co-partners in any such firm, to be furnished in such manner, and verified upon oath or otherwise, as the Court may direct.

484.—(1.) Where a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of the defendant, forthwith declare in writing the names and addresses of all the persons constituting the firm on whose behalf the action is brought.

Disclosure of
names of
partners in
action
brought by
firm.
Id. r. 2.

(2.) If the plaintiffs or their solicitors fail to comply with such demand, all proceedings in the action may, on an application for that purpose, be stayed, on such terms as the Court may direct.

(3.) When the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the writ; but all the proceedings shall nevertheless continue in the name of the firm.

485.—(1.) Where persons are sued as partners in the name of their firm, the writ shall be served either on any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership on any person having at the time of service the control or management of the partnership business there.

Service on
partners sued
in name of
firm.
Id. r. 3.

(2.) Subject to the provisions of this Chapter, such service shall be deemed good service on the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary: Provided that, in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ shall be served on every person within the jurisdiction sought to be made liable.

486.—(1.) Where a writ is issued against a firm, and is served as directed by the last preceding section, every person on whom it is served may 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.

Notice of
capacity in
which person
is served.
Id. r. 4.

(2.) In default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners. **487.** Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall nevertheless continue in the name of the firm.
O. 48 A r. 5.

Non-necessity of appearance by manager served. **488.** Where a writ is issued against a firm, and is served on a person having the control or management of the partnership business, no appearance by him shall be necessary, unless he is a member of the firm sued.
Ib. r. 6.

Appearance under protest of person served as partner. **489.** Any person served as a partner may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm, and obtaining judgment against the firm in default of appearance, if no partner has entered an appearance in the ordinary form.
Ib. r. 7.

Execution of judgment against firm. **490.—(1.)** Where judgment is given against a firm, execution may issue—
Ib. r. 8.

(a.) against any property of the partnership within the jurisdiction;

(b.) against any person who has appeared in his own name under section 487 or section 488, or who has admitted, either on the pleadings or at the trial, that he is a partner, or who has been adjudged to be a partner; and

(c.) against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

(2.) If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court for leave to do so; and the Court may give such leave if the liability is not disputed, or, if 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 an action may be tried and determined.

(3.) Except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ, unless the writ has been served on him out of the jurisdiction with the leave of the Court, or he has been served within the jurisdiction after the writ was issued.

Attachment of debts owing from firm. **491.—(1.)** Debts owing from a firm carrying on business within the jurisdiction may be attached under Chapter 16, although one or more members of such firm may be resident abroad, provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order.
Ib. r. 9.

(2.) An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

Application of provisions of Chapter 19 to actions between co-partners. **492.** The provisions of this Chapter shall apply to actions between a firm and one or more of its members and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in any such action without the 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 seem just.
Ib. r. 10.

Application of provisions of Chapter 19 to person trading as firm. **493.** Any person carrying on business within the jurisdiction 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 the provisions of this Chapter relating to proceedings against firms shall apply.
Ib. r. 11.

CHAPTER XX.

ACTION BY OR AGAINST PAUPER.

Application by poor person to sue or defend as pauper. **494.—(1.)** Any poor person, before commencing or defending any action or other proceeding in the Court in his own right or becoming poor during the progress thereof, may apply to the Court by petition for leave to sue or defend as a pauper.
H. K. Code, s. 86 (1.)

(2.) The petition shall be supported by an affidavit of the petitioner and two householders living in his neighbourhood or other responsible persons that he is not possessed of property to the amount of fifty dollars in value, his wearing apparel and the subject-matter of the action or proceeding only excepted.

495.—(1.) The Court shall thereupon assign a counsel and solicitor to consider the petitioner's case.

Assignment of counsel and solicitor to consider case.

H. K. Code,
s. 86 (1).
O. 16 r. 23.

(2.) The petitioner shall lay a case before counsel for his opinion whether or not he has reasonable grounds for suing or defending.

496.—(1.) No person shall be admitted to sue or defend as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, and with a certificate, signed by counsel, that he has considered the case and believes the petitioner to have a good cause of action or defence, as the case may be, is produced before the Court.

Order for admission to sue or defend as pauper.
H. K. Code,
s. 86 (1).
O. 16 r. 24.

(2.) If these conditions are complied with, the Court may order that the petitioner shall be admitted to sue or defend, as the case may be, as a pauper.

497. Where a person is admitted to sue or defend as a pauper, the Court may, if necessary, assign a counsel or solicitor, or both, to assist him.

Assignment of counsel and solicitor to assist pauper.

Ib. r. 26.

498.—(1.) No fee shall be payable by a pauper to his counsel or solicitor.

(2.) A person admitted to sue or defend as a pauper shall not be liable to any Court fee: Provided that if such person succeeds and costs are adjudged to be paid by his opponent, then his counsel and solicitor shall be entitled to and shall receive all such fees as the Registrar may allow to them on taxation, and such Court fees as would in other cases be chargeable shall be charged and recovered.

Exemption of pauper from payment of fees.
H. K. Code,
s. 86 (4).
O. 16 r. 24, 25.

499. A counsel or solicitor assigned under this Chapter shall not be at liberty to refuse his assistance unless he satisfies the Court that he has some good reason for refusing.

Duty of counsel or solicitor assigned to act.

Ib. r. 26.

500.—(1.) While a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward for the conduct of his business in the Court.

Punishment of person taking fee from pauper.

Ib. r. 27.

(2.) Every person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward shall be deemed guilty of a contempt of Court, and shall be liable to be proceeded against and punished accordingly.

501. If any person admitted to sue or defend as a pauper—

Dispaupering of pauper.
H. K. Code,
s. 86 (5).
O. 16 r. 28.

- (1.) gives, or agrees to give, any such fee, profit, or reward; or
- (2.) becomes of ability during the progress of the action or proceeding; or
- (3.) misbehaves himself therein by any vexatious or improper conduct or proceeding; or
- (4.) wilfully delays the action or proceeding,

he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same action or proceeding to sue or defend as a pauper.

502.—(1.) No motion-paper or notice of motion shall be filed or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor, if any.

Duty of solicitor of pauper as to signing of documents.
O. 16 r. 29, 30.

(2.) It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause.

CHAPTER XXI.

ACTION FOR RECOVERY OF IMMOVABLE PROPERTY.

503. In an action for the recovery of immovable property, service of the writ of summons may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

Service of writ of summons in case of vacant possession.
O. 9 r. 9.

Action for recovery of immovable property to the Crown. **504.** The Attorney General may lawfully institute and prosecute in his own name an action for recovering unto the Crown any immovable property claimed by the Crown and whereof the Crown is not in actual possession.

Ord. No. 5 of 1856 s. 9. **505.** Any person not named as a defendant in a writ of summons for the recovery of immovable property may, by leave of the Court, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

Appearance by person in possession. *O. 12 r. 25.* **506.** Any person appearing to defend an action for the recovery of immovable property as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Appearance by landlord. *Ib. r. 26.* **507.** Where a person not named as defendant in a writ of summons for the recovery of immovable property has obtained leave of the Court to appear and defend, he shall enter an appearance, according to the provisions of Chapter 1, entitled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Procedure where person not named as defendant appears. *Ib. r. 27.* **508.**—(1.) Any person appearing to a writ of summons for the recovery of immovable property shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice entitled in the action and signed by him or his solicitor.

(2.) Such notice shall be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole property.

Limitation of defence to part of property. *Ib. r. 28.* **509.** No defendant in an action for the recovery of immovable property who is in possession by himself or by his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief on any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely on any ground of defence which he can prove, except as hereinbefore mentioned.

Plea of possession. *O. 21 r. 21.*

Action of Ejectment.

Duty of tenant to give notice to landlord of writ in ejectment. *15 & 16 Vict. c. 76 s. 209.* **510.** Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord or his agent, under penalty of forfeiting the value of three years' improved or rack rent of the premises demised or held in the possession of such tenant to the person of whom he holds, to be recovered by action in any court having jurisdiction for the amount.

Proceedings in ejectment by landlord against tenant for non-payment of rent. *Ib. s. 210.* **511.**—(1.) In all cases between landlord and tenant, as often as it happens that one half year's rent is in arrear, and the landlord or lessor to whom the same is due has right by law to re-enter for the non-payment thereof, the landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises; or in case the same cannot be legally served, or no tenant is in actual possession of the premises, then the landlord or lessor may affix a copy thereof upon the door of any demised messuage, which service shall stand in the place and stead of a demand and re-entry; and if it is made to appear to the Court at the trial that half a year's rent was due before the writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the landlord or lessor had power to re-enter, then the landlord or lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.

(2.) In case the lessee or his assignee, or other person claiming or deriving under the lease, permits and suffers judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and with-

out proceeding for relief on equitable grounds within six months after such execution executed, then the lessee, his assignee, and all other persons claiming and deriving under the lease shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing an appeal against such judgment; and the landlord or lessor shall from thenceforth hold the demised premises discharged from such lease: Provided that nothing herein contained shall extend to bar the right of any mortgagee of the lease, or any part thereof, who is not in possession, if such mortgagee, within six months after such judgment obtained and execution executed, pays all rent in arrear and all costs and damages sustained by the lessor or person entitled to the remainder or reversion as aforesaid, and performs all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

512.—(1.) In case the lessee or his assignee, or other person claiming any right, title, or interest in law or equity of, in, or to the lease, within the time aforesaid, applies to the Court for relief on equitable grounds, such person shall not be entitled to a stay of the proceedings on such ejection, unless, within forty days next after a full and perfect answer to such application has been made by the claimant in such ejection, he pays into Court such sum of money as the landlord or lessor in his answer swears to be due and in arrear over, and above all just allowances, and also the costs taxed in the said action, there to remain until the trial of the cause, or to be paid out to the landlord or lessor on good security, subject to the judgment of the Court.

Limitation of right of lessee to relief on equitable grounds. 15 & 16 Vict. c. 76 s. 211.

(2.) In case such application for relief on equitable grounds is made within the time aforesaid and after execution is executed, the landlord or lessor shall be accountable only for so much and no more as he may really and *bonâ fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what is so made by the landlord or lessor happens to be less than the rent reserved on the lease, then the lessee or his assignee, before he shall be restored to his possession, shall pay to the landlord or lessor the amount by which the money so made by him fell short of the reserved rent for the time the landlord or lessor held the demised premises.

513. If the lessee or his assignee, at any time before the trial in such ejection, pays or tenders to the landlord or lessor, his executors or administrators, or his or their solicitor in the cause, or pays into Court all the rent and arrears, together with the costs, then all further proceedings on the ejection shall cease and be discontinued; and if the lessee, his executors, administrators, or assigns, on such application as aforesaid, is or are relieved on equitable grounds, he and they shall have, hold, and enjoy the demised premises according to the lease thereof made, without any new lease.

Discontinuance of proceedings in ejection on payment of rent and costs. *Ib.* s. 212.

514.—(1.) Where the term or interest of any tenant holding under a lease or agreement in writing any immovable property for any term or number of years certain, or from year to year, has expired or been determined, either by the landlord or tenant, by regular notice to quit, and the tenant, or any person holding or claiming by or under him, refuses to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally on or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejection for the recovery of possession, it shall be lawful for him, at the foot of the writ in ejection, to address a notice to such tenant or person requiring him to find such bail, if ordered by the Court, and for such purposes as are herein-after next specified.

Ejection by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit. *Ib.* s. 213.

(2.) On the appearance of the party, on an affidavit of service of the writ and notice, it shall be lawful for the landlord, on his producing the lease or agreement or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to apply to the Court, by motion or summons, for such tenant or person to show cause, within a time to be fixed by the Court on a consideration of the

situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum conditioned to pay the damages and costs which may be recovered by the claimant in the action; and it shall be lawful for the Court, upon cause shown or upon affidavit of the service of the motion or summons in case no cause is shown, to order such tenant or person, within a time to be fixed upon a consideration of all the circumstances, to find such bail, with such conditions and in such manner as may be specified in the order.

(3.) If such tenant or person refuses or neglects to comply with the order and lays no ground to induce the Court to enlarge the time for obeying the same, then the landlord, on filing an affidavit that the order has been made and served and not complied with, shall be at liberty to sign judgment for recovery of possession and costs.

Power on trial of ejectment by landlord against tenant to give damages for mesne profits.
15 & 16 Vict. c. 76 s. 214.

515. Where it appears, on the trial of any ejectment at the suit of a landlord against a tenant, that the tenant or his attorney has been served with due notice of trial, the Court shall, whether the defendant appears at the trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the judgment given in the cause, or to some preceding day to be specially mentioned therein; and the Court or jury on the trial finding for the claimant shall in such case give its judgment or their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment within the time hereinbefore provided, not only for the recovery of possession and costs, but also for the mesne profits found by the Court or jury: Provided that nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which may accrue from the judgment or verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.

Saving of other remedies of landlord.
Ib. s. 215.

516. Nothing in this Chapter shall be construed to prejudice or affect any other right of action or remedy which a landlord may possess in any of the cases hereinbefore provided for, otherwise than as hereinbefore expressly enacted.

CHAPTER XXII.

MANDAMUS.

Action of Mandamus.

See also Ord. No. 6 of 1855 ss. 59-65.

Right of plaintiff to claim *mandamus* by indorsement on writ.
H. K. Code, s. 85 (1.)

517. The plaintiff in any action may indorse on the writ of summons a notice that the plaintiff intends to claim a writ of *mandamus*, and the plaintiff may thereupon claim in the statement of claim, either together with any other demand which may be enforced in such action or separately, a writ of *mandamus* commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

Setting forth of grounds for *mandamus* in statement of claim.
Ib. s. 85 (2.)

518. The statement of claim in any such action shall set forth sufficient grounds on which the claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains, or may sustain, damage by the non-performance of such duty, and that performance thereof has been demanded by him, and refused or omitted.

Proceedings in action claiming *mandamus*.
Ib. s. 85 (3.)
Issue of peremptory writ of *mandamus*.
Ib. s. 85 (4.)

519. The proceedings in any such action shall be the same in all respects, as nearly as may be, as in an ordinary action for the recovery of damages.

520.—(1.) In case judgment is given for the plaintiff that a *mandamus* do issue, the Court may, if it thinks fit, issue a peremptory writ of *mandamus* to the defendant, commanding him forthwith, or within such time as the Court may direct, to perform the duty to be enforced, and such writ may, in case of disobedience, be enforced by committal.

(2.) The Court may, on sufficient cause shown, extend the time for the performance of the duty.

521. The writ of *mandamus* need not contain any recitals, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution, except that it shall be directed to the party and not to the Bailiff and be returnable forthwith; and no return thereto, except that of compliance, shall be allowed, but time to return it may, on sufficient grounds, be allowed by the Court, either on or without terms, as to the Court may seem just.

Nature of writ and return thereto.
H. K. Code, s. 85 (5.)

Prerogative Writ of Mandamus.

522. Nothing in this Chapter shall affect the jurisdiction of the Court to grant prerogative writs of *mandamus*; nor shall any writ of *mandamus* issued out of the Court be invalid by reason of the right of the prosecutor to proceed by action of *mandamus* under this Chapter.

Saving of prerogative writ of *mandamus*.
17 & 18 *Vict.* c. 125 s. 75.

523. On application by motion for a prerogative writ of *mandamus*, the rule may in all cases be absolute in the first instance, if the Court thinks fit; and the writ may bear *teste* on the day of its issuing, and may be made returnable forthwith, but time to return it may, on sufficient grounds, be allowed by the Court, either on or without terms, as to the Court may seem just.

Acceleration of proceedings for prerogative writ.
Ib. s. 76.

524. The provisions of this Code, so far as they are applicable, shall apply to the pleadings and proceedings on a prerogative writ of *mandamus* issued by the Court.

Procedure on prerogative writ.
Ib. s. 77.

CHAPTER XXIII.

INTERPLEADER.

525. Relief by way of interpleader may be granted—

(1.) where the person seeking relief (in this Chapter called the applicant) is under liability for any debt or movable property for or in respect of which he is, or expects to be, sued by two or more parties (in this Chapter called the claimants) making adverse claims thereto; and

Cases in which relief by interpleader granted.
O. 57 r. 1.

(2.) where the applicant is the Bailiff and claim is made to any movable property taken or intended to be taken in execution under any process, or to the proceeds or value of any such movable property, by any person other than the person against whom the process issued.

526. The applicant must satisfy the Court, by affidavit or otherwise,—

(1.) that the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

Matters to be proved by applicant.
Ib. r. 2.
Schedule: Form No. 40.

(2.) that the applicant does not collude with any of the claimants; and

(3.) that the applicant, except where he is the Bailiff and has seized movable property and has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant, is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court may direct.

527. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

Adverse titles of claimants.
Ib. r. 3.

528. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

Making of application by defendant.
Ib. r. 4.

529. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

Summons by applicant.
Ib. r. 5.

530. If the application is made by the defendant in an action, the Court may stay all further proceedings in the action.

Stay of action.
Ib. r. 6.

531. If the claimants appear in pursuance of the summons, the Court may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant.

Order upon summons.
Ib. r. 7.

Disposal of claims in summary manner.
O. 57 r. 8.

532. The Court may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable to do so, dispose of the merits of their claims and decide the same in a summary manner and on such terms as may be just.

Decision of question of law.
Ib. r. 9.

533. Where the question raised by the claims is a question of law, and the facts are not in dispute, the Court may either decide the question without directing the trial of an issue or order that a special case be stated for the opinion of the Court.

Failure of claimant to appear or refusal to comply with order.
Ib. r. 10.

534. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, refuses or neglects to comply with any order made after his appearance, the Court may make an order declaring him and all persons claiming under him for ever barred against the applicant and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

Finality of order.
Ib. r. 11.

535. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court in a summary way, under section 532, shall be final and conclusive against the claimants, and all persons claiming under them, except by special leave of the Court or of the Full Court.

Application of Chapters 6 and 12.
Ib. r. 13.

536. Chapters 6 and 12 shall, with the necessary modifications, apply to an interpleader issue; and the Court may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

General powers of the Court in interpleader proceedings.
Ib. r. 15.

537. The Court may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

CHAPTER XXIV.

REFERENCE TO ARBITRATION.

Interpretation of term.
52 & 53 Vict. c. 49 s. 27.

538. In this Chapter, unless the context otherwise requires, "submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Reference by Consent out of Court.

Effect of submission.
Ib. s. 1.

539. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court, and shall have the same effect in all respects as if it had been made an order of Court.

Provisions implied in submission.
52 & 53 Vict. c. 49 s. 2 and First Schedule.

540. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions hereinafter set forth, so far as they are applicable to the reference under the submission, that is to say,—

- (1.) if no other mode of reference is provided, the reference shall be to a single arbitrator;
- (2.) if the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award;
- (3.) the arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award;
- (4.) if the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators;
- (5.) the umpire shall make his award within three months after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may from time to time enlarge the time for making the award;

- (6.) the parties to the reference, and all persons claiming through or under them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, upon oath, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, and documents in their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require;
- (7.) the witnesses on the reference shall, if the arbitrators or umpire think fit, be examined upon oath;
- (8.) the award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming through or under them respectively; and
- (9.) the costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may award costs to be paid as between solicitor and client, and such costs shall be taxed by the Registrar.

541. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in the Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing any pleading or taking any other step in the proceedings, apply to the Court to stay the proceedings, and the Court, if it is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings accordingly.

Power for the Court to stay legal proceedings where there is a submission.
52 & 53 Vict. c. 49 s. 4.

542.—(1.) In any of the following cases,—

- (a.) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b.) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;
- (c.) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; and
- (d.) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

Appointment in certain cases of arbitrator, etc.
Ib. s. 5.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

(2.) If the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

543. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention,—

Power for parties in certain cases to supply vacancy among arbitrators.
Ib. s. 6.

- (1.) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place; and
- (2.) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole

arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment made in pursuance of this section.

Powers of arbitrator or umpire, and procedure on reference. 52 & 53 Viet. c. 49 s. 7.

544.—(1.) The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

(a.) to administer oaths to the parties and witnesses appearing; and

(b.) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(c.) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

(2.) The arbitrators or umpire acting under a submission shall also have such authority, and shall conduct the reference in such manner, as is hereinafter mentioned, that is to say,—

O. 36 r. 48. (a.) they may hold the proceedings on the reference at or adjourn them to any place which they may deem most convenient, and have any inspection or view which they may deem expedient for the better disposal of the controversy before them;

Ib. r. 49. (b.) evidence shall be taken on the reference, and the attendance of witnesses may be enforced by *subpœna*, and the proceedings on the reference shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before the Court;

Ib. r. 50. (c.) they shall have the same authority with respect to discovery and production of documents, and in the conduct of the reference, as the Court;

Ib. r. 51. (d.) nothing in this section shall authorize them to commit any person to prison or to enforce any order by committal or otherwise; and

Ib. r. 53. (e.) when they make an award they shall immediately thereafter cause notice thereof to be given in writing to all the parties to the reference before them.

Suing out of *subpœna*. 52 & 53 Viet. c. 49 s. 8. 545. Any party to a submission may sue out a writ of *subpœna ad testificandum* or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Enlargement of time for making award. Ib. s. 9. 546. The time for making an award may from time to time be enlarged by order of the Court, whether the time for making the award has expired or not.

Remitting of award. Ib. s. 10. 547.—(1.) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the re-consideration of the arbitrators or umpire.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Misconduct of arbitrator or umpire. Ib. s. 11. 548.—(1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award.

Application to set aside award. O. 64 r. 14. 549. An application to set aside an award may be made within one month after such award has been made and published to the parties.

Enforcement of award. 52 & 53 Viet. c. 49 s. 12. 550.—(1.) An award may, by leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect.

O. 42 r. 31 A. (2.) An award may, by leave of the Court and on such terms as may be just, be enforced at any time though the time for applying to set it aside has not elapsed.

Reference under Order of Court.

Reference of question arising in cause or matter for inquiry and 551.—(1.) Subject to the provisions of this Code and to any right to have particular cases tried by a jury, the Court may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry and report to a special referee.

(2.) The report of a special referee may be adopted wholly or partially by the Court, and, if so adopted, may be enforced in the same manner as a judgment or order of the Court to the same effect.

report by referee, etc. 52 & 53 Vict. c. 49 s. 13.

552. In any cause or matter (other than a criminal proceeding by the Crown),—

Reference of cause or matter, or of question therein, for trial before referee, etc. *Ib.* s. 14.

- (1.) if all the parties interested who are not under disability consent; or
- (2.) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be made before a jury or conducted by the Court through its other ordinary officers; or
- (3.) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties or before an officer of the Court.

553. In every case of reference to a special referee or arbitrator or to an officer of the Court under an order of the Court in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the Court, and such special referee, arbitrator, or officer shall have such authority, and shall conduct the reference in such manner, as is hereinafter mentioned, that is to say,—

Powers of referee, and procedure on reference. *Ib.* s. 15 (1.)

- (1.) he may, subject to the order of the Court, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view which he may deem expedient for the better disposal of the controversy before him. If he is appointed by an order of the Court, he shall, unless otherwise directed by the Court, proceed with the trial *de die in diem*, in a similar manner as in an action tried with a jury; *O.* 36 r. 48.
- (2.) subject to any order to be made by the Court, evidence shall be taken at the trial, and the attendance of witnesses may be enforced by *subpœna*, and the trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before the Court; *Ib.* r. 49.
- (3.) subject to any such order as last aforesaid, he shall have the same authority with respect to discovery and production of documents, and in the conduct of the trial or reference, and the same power to direct that judgment be entered for any or either party, as the Court; *Ib.* r. 50.
- (4.) nothing in this section shall authorize him to commit any person to prison or to enforce any order by committal or otherwise; *Ib.* r. 51.
- (5.) he may, before the conclusion of the trial before him, or by his report or award under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from him and to remit the cause or matter, or any part thereof, for re-trial or further consideration to him or to any other special referee, arbitrator, or officer of the Court; or the Court may decide the question referred to him on the evidence taken before him, either with or without additional evidence as the Court may direct; *Ib.* r. 52.
- (6.) when he makes a report or award he shall immediately thereafter cause notice thereof to be given in writing to all the parties to the trial or reference before him; *Ib.* r. 53.
- (7.) where a report or award has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court to adopt the report or award, or without leave of the Court to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or award, or to remit the cause or matter

- or any part thereof for re-trial or further consideration to the same or any other special referee, arbitrator, or officer of the Court ;
- O. 36 r. 55. (8.) where a report or award has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party, by an eight days' notice of motion, to apply to the Court to adopt and carry into effect the report or award, or to vary the report or award, or to remit the cause or matter or any part thereof for re-trial or further consideration to the same or any other special referee, arbitrator, or officer of the Court ; and
- Ib. r. 55B. (9.) he may, subject to any directions in the order of reference, exercise the same discretion as to costs as the Court could have exercised.
- Judgment to be entered by referee. O. 40 r. 2. 554. Where at the trial a special referee, arbitrator, or officer of the Court abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not set down such a motion and give notice thereof to the other parties within ten days after the trial, any defendant may set down a motion for judgment, and give notice thereof to the other parties.
- Setting aside judgment of referee. Ib. r. 6. 555. Where at the trial a special referee, arbitrator, or officer of the Court directs that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment, on the ground that, upon the finding as entered, the judgment so directed is wrong.
- Effect of report or award. 52 & 53 Vict. c. 49 s. 15 (2). 556. The report or award of any special referee, arbitrator, or officer of the Court on any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.
- Remuneration of referee, etc. Ib. s. 15 (3). 557. The remuneration to be paid to any special referee, arbitrator, or officer of the Court to whom any matter is referred under an order of the Court shall be determined by the Court.
- Powers of the Court. Ib. s. 16. 558. The Court shall, as to any reference under an order of the Court, have all the powers which are by this Chapter conferred on the Court as to a reference by consent out of Court.

General Provisions.

- Compelling attendance of witness before referee, etc. Ib. s. 18. 559.--(1.) The Court may order that a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue to compel the attendance before a special referee, or before any arbitrator, umpire, or officer of the Court, of a witness wherever he may be within the Colony.
- (2.) The Court may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before a special referee or before any arbitrator, umpire, or officer of the Court.
- Statement of special case pending reference. Ib. s. 19. 560. Any special referee, arbitrator, or umpire or officer of the Court may, at any stage of the proceedings under a reference, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.
- Costs. Ib. s. 20. 561. Any order made under this Chapter may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.
- Punishment for perjury. Ib. s. 22. 562. Every person who wilfully and corruptly gives false evidence before any special referee, arbitrator, or umpire or officer of the Court shall be guilty of perjury, as if the evidence had been given in open Court, and may be dealt with, prosecuted, and punished accordingly.
- The Crown to be bound by Chapter 24. Ib. s. 23. 563. This Chapter shall, except as in this Chapter expressly mentioned, apply to any arbitration to which His Majesty the King is a party, but nothing in this Chapter shall empower the Court to order any proceedings to which His Majesty is a party, or any question or issue in any such proceedings, to be tried before any special referee, arbitrator, or officer without the consent of His Majesty, or shall affect the law as to costs payable by the Crown.
- Application of Chapter 24 to references under statutory powers. Ib. s. 24. 564. This Chapter shall apply to every arbitration under any Ordinance passed before or after the commencement of this Code as if the arbitration were pursuant to a submission, except in so far as this Chapter is incon-

sistent with the Ordinance regulating the arbitration or with any rules or procedure authorized or recognized by that Ordinance.

565. This Chapter shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration commenced after the commencement of this Code under any agreement or order made before the commencement of this Code.

Saving as to pending arbitrations. 52 & 53 Viet. c. 49 s. 25

PART III.

PROVISIONAL REMEDIES.

CHAPTER XXV.

ARREST AND ATTACHMENT BEFORE JUDGMENT.

Arrest of Absconding Defendant.

566. If in any action, not being an action for the recovery of immovable property, the defendant is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction of the Court his property or any part thereof, the plaintiff may, either at the institution of the action or at any time thereafter until final judgment, apply to the Court to call upon the defendant to furnish sufficient security for his appearance to answer any judgment that may be given against him in the action.

Application for taking security for appearance of defendant in certain cases. *H. K. Code*, s. 16 (1.)

567. If the Court, after making such investigation as it may consider necessary, is of opinion that there is probable cause for believing that the defendant is about to leave the jurisdiction, or that he has disposed of or removed from the jurisdiction his property or any part thereof, and that in either case, by reason thereof, the execution of any judgment that may be given against him in the action is likely to be obstructed or delayed, it shall be lawful for the Court to issue a warrant to the Bailiff enjoining him to bring the defendant before the Court that he may show cause why he should not give security for his appearance to answer any judgment that may be given against him in the action.

Issue of warrant for bringing defendant before the Court to show cause why he should not give security. *Ib.* s. 16 (2.) Schedule: Forms Nos. 41 and 42.

568.—(1.) If the defendant shows such cause, the warrant shall be discharged and the defendant be released.

Showing cause, and procedure thereon. *Ib.* s. 16 (3.), (4.) Schedule: Form No. 43.

(2.) If the defendant fails to show such cause, the Court shall order him to give sufficient bail for his appearance at any time when called upon while the action is pending and until the execution of any judgment that may be given against him in the action.

(3.) The surety or sureties giving such bail shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the action, with costs.

Schedule: Form No. 44.

(4.) If the defendant offers, in lieu of giving bail, to deposit in Court a sum of money or other valuable property, sufficient to answer any sum of money that may be adjudged against him in the action, with costs, the Court may accept such deposit in lieu of bail.

569.—(1.) If the defendant complies with the order of the Court, the warrant shall be discharged and the defendant be released.

Release or committal to custody of defendant. *Ib.* s. 16 (5.)

(2.) If the defendant does not comply with the order of the Court, he may be committed to prison until the decision of the action, or, if judgment is given against him, until the execution of the judgment, or until the further order of the Court.

570. A defendant who has given bail for his appearance, or who has been committed to prison for default in giving such bail, may at any time apply to the Court for the discharge of his bail or for his release from prison, as the case may be, on the ground that the plaintiff has not used due diligence in the prosecution of the action, and, on the hearing of the application, the Court may make such order as may seem just.

Application by defendant for discharge of bail or for release from prison. *New.*

571.—(1.) If it appears to the Court that the arrest of the defendant was applied for on insufficient grounds, or if the action is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to

Power to award limited compensation to de-

defendant for unjustifiable arrest. *H. K. Code, s. 16 (6.)* the Court that there was no probable ground for instituting the action, the Court may, on the application of the defendant, made either before or at the time of the pronouncing of the judgment, award against the plaintiff such amount, not exceeding one thousand dollars, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of the arrest: Provided that the Court shall not award a larger sum by way of compensation under this section than it is competent to the Court to award in an action for damages.

(2.) An award of compensation under this section shall bar any action for damages in respect of the arrest.

Interim Attachment of Property of Defendant.

Application for taking security from defendant or for attachment of his property in certain cases. *Ib. s. 17 (1.), (2.)* 572.—(1.) If in any action the defendant, with intent to obstruct or delay the execution of any judgment that may be given against him in the action, is about to dispose of his property, or any part thereof, or to remove any such property from the jurisdiction of the Court, the plaintiff may, either at the institution of the action or at any time thereafter until final judgment, apply to the Court to call upon the defendant to furnish sufficient security to produce and place at the disposal of the Court, when required, his property, or the value of the same, or such portion thereof as may be sufficient to answer any judgment that may be given against him in the action, and, in the event of his failing to furnish such security, to direct that any property, movable or immovable, belonging to the defendant shall be attached until the further order of the Court.

(2.) The application shall contain a specification of the property required to be attached, and the estimated value thereof, so far as the plaintiff can reasonably ascertain the same.

(3.) There shall be filed with the application an affidavit to the effect that the defendant is about to dispose of or remove his property or some part thereof, with such intent as aforesaid.

Issue of warrant requiring defendant to furnish security or to appear and show cause, and attaching his property. *Ib. s. 17 (3.), (5.)* Schedule: Form No. 45. 573.—(1.) If the Court, after making such investigation as it may consider necessary, is of opinion that there is probable cause for believing that the defendant is about to dispose of or remove his property, or some part thereof, with such intent as aforesaid, it shall be lawful for the Court to issue a warrant to the Bailiff commanding him to call upon 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 answer any judgment that may be given against him in the action, or to appear before the Court and show cause why he should not furnish such security.

(2.) The Court may also in the warrant direct the attachment until further order of the whole or any portion of the property of the defendant within the Colony.

(3.) The attachment shall be made, according to the nature of the property to be attached, in the manner prescribed in Chapter 16 for the attachment of property in execution of a judgment for money.

Showing cause, and procedure thereon. *Ib. s. 17 (4.), (5.)* 574.—(1.) If the defendant shows such cause or furnishes the required security within the time fixed by the Court, and the property specified in the application, or any portion thereof, has been attached, the Court shall order the attachment to be withdrawn.

(2.) If the defendant fails to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as may be sufficient to answer any judgment that may be given against the defendant in the action, shall be attached until the further order of the Court.

(3.) The attachment shall be made, according to the nature of the property to be attached, in the manner prescribed in Chapter 16 for the attachment of property in execution of a judgment for money.

Saving of rights of other persons 575. The attachment shall not affect the rights of any persons not being parties to the action, and in the event of any claim being preferred to the property attached

before judgment, such claim shall be investigated in the manner prescribed in Chapter 16 for the investigation of claims to property attached in execution of a judgment.

576. In any case of attachment before judgment, the Court shall at any time remove the same, on the defendant furnishing the required security, together with security for the costs of the attachment.

577.—(1.) If it appears to the Court that the attachment was applied for on insufficient grounds, or if the action is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the action, the Court may, on the application of the defendant, made either before or at the time of the pronouncing of the judgment, award against the plaintiff such amount, not exceeding one thousand dollars, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of the attachment: Provided that the Court shall not award a larger sum by way of compensation under this section than it is competent to the Court to award in an action for damages.

(2.) An award of compensation under this section shall bar any action for damages in respect of the attachment.

Arrest and Detention of Ship.

578. Where the extreme urgency or other peculiar circumstances of the case appear to the Court so to require, it shall be lawful for the Court, on the application of the plaintiff in any action or of its own motion, by warrant under the seal of the Court, to stop the clearance or to order the arrest and detention by the Bailiff of any ship about to leave the Colony (other than a ship enjoying immunity from civil process), and such clearance shall be stopped or the ship arrested and detained accordingly: Provided that no such warrant shall be issued at the instance of any plaintiff unless the application for the issue thereof is supported by an affidavit of the facts.

579. The Court may at any time release a ship detained under the last preceding section, on such terms as it may think just.

580.—(1.) If it appears to the Court that the warrant was applied for on insufficient grounds, or if the action is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the action, the Court may, either before or at the time of pronouncing its judgment, award against the plaintiff such amount, not exceeding one thousand dollars, as it may deem a reasonable compensation for any injury or loss occasioned by the issue of the warrant, and such compensation shall be paid to such parties as the Court may direct: Provided that the Court shall not award a larger sum by way of compensation under this section than it is competent to the Court to award in an action for damages.

(2.) An award of compensation under this section shall bar any action for damages in respect of the arrest and detention of the ship.

CHAPTER XXVI.

TEMPORARY INJUNCTION.

581.—(1.) In any action in which it is shown, to the satisfaction of the Court, that any property in dispute in the action is in danger of being wasted, damaged, or alienated by any party to the action, it shall be lawful for the Court to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such other order for the purpose of staying and preventing him from wasting, damaging, or alienating the property as to the Court may seem fit.

(2.) In case of disobedience, the injunction may be enforced by the committal to prison of the person disobeying it.

582.—(1.) In any action for restraining the defendant from the commission of any breach of contract or other injury, and whether the same is accompanied by any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the action and

under attachment.

H. K. Code,
s. 17 (6.)

Removal of attachment on furnishing of security.

Ib. s. 17 (7.)

Power to award limited compensation to defendant for unjustifiable attachment.

Ib. s. 17 (8.)

Arrest and detention of ship in special circumstances.

Ib. s. 19 (1.)

Release of ship under detention.

Ib. s. 19 (3.)

Power to award limited compensation for unjustifiable arrest and detention.

Ib. s. 19 (2.)

Granting of injunction to stay waste, damage, or alienation of property.

Ib. s. 18 (1.)

Granting of injunction to restrain breach of

contract or other injury. *H. K. Code, s. 18 (2.)* whether before or after judgment, to apply to the Court for an injunction to restrain the defendant from the repetition or continuance of the breach of contract or injury complained of, or the commission of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2.) The injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as may seem just.

(3.) In case of disobedience, the injunction may be enforced by the committal to prison of the person disobeying it.

Giving notice of application for injunction. *Indian Code, s. 494.* **583.** The Court shall in all cases under this Chapter, except where it appears that the object of granting an 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.

Effect of injunction directed to company or corporation. *Ib. s. 495.* **584.** An injunction directed to a public company or corporation shall be binding not only on the company or corporation itself, but also on all members and officers of the company or corporation whose personal action it seeks to restrain.

Discharge, etc., of order for injunction. *Ib. s. 496.* **585.** Any order for an injunction made under this Chapter may, on application made for that purpose by any party affected by the order, be discharged, or varied, or set aside by the Court, on such terms as may seem just.

Power to award limited compensation to defendant for unjustifiable injunction. *H. K. Code, s. 18 (4.)* **586.—(1.)** If it appears to the Court that the injunction was applied for on insufficient grounds, or if the action is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the action, the Court may, on the application of the defendant, made either before or at the time of the pronouncing of the judgment, award against the plaintiff such amount, not exceeding one thousand dollars, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by the issue of the injunction: Provided that the Court shall not award a larger sum by way of compensation under this section than it is competent to the Court to award in an action for damages.

(2.) An award of compensation under this section shall bar any action for damages in respect of the issue of the injunction.

CHAPTER XXVII.

RECEIVER.

Appointment of receiver of property in dispute and powers of receiver. *Ib. s. 18 (1.)* **587.** Whenever it appears to the Court to be necessary for the realization, preservation, or better custody or management of any property, the subject of an action or other proceeding or under attachment, the Court may appoint a receiver of such property, and, if necessary, order all or any of the following things, namely,—

- (1.) the removal of the person in whose possession or custody the property may be from the possession or custody thereof;
- (2.) the commitment of such property to the custody or management of such receiver; and
- (3.) the granting to such receiver of all such powers as to bringing and defending actions and other proceedings, and for the realization, management, protection, preservation, and improvement of the property, for the collection of the rents and profits thereof, for the application and disposal of such rents and profits, and for the execution of instruments in writing as the owner himself has, or such of those powers as the Court thinks fit.

Appointment of receiver by way of equitable execution. *O. 50 r. 15 A.* **588.** In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court, in determining whether it is just and convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if it thinks fit, direct any inquiries on these or other matters before making the appointment.

Giving of security by, **589.** Where an order is made directing a receiver to be appointed, the person to be appointed shall, unless

otherwise ordered, first give security, to be allowed by the Court and taken before the Registrar, duly to account for what he shall receive as such receiver and to pay the same as the Court may direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance by way of fees or commissions or otherwise, as the Court may think fit.

and salary of receiver.
O. 50 r. 16.

590. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding section mentioned, and may thereupon direct such judgment or order to be drawn up.

Adjournment of order for receiver into Chambers for giving of security.
Ib. r. 17.

591.—(1.) When a receiver is appointed with a direction that he shall pass accounts, the Court shall fix the days upon which he shall (annually or at longer or shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as may be certified as proper to be paid by him: Provided that the Court may, on good cause shown, enlarge any such period.

Fixing of times for leaving and passing accounts and paying balances.
Ib. r. 18.

(2.) If any such receiver neglects to leave and pass his accounts and pay the balances thereof at the times so fixed or enlarged for that purpose as aforesaid, the Court may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary or allowance therein claimed by such receiver, and may also, if it thinks fit, charge him with interest at the rate for the time being fixed by the Court upon the balances so neglected to be paid by him during the time the same may appear to have remained in his hands.

592.—(1.) Every such receiver shall leave with the Registrar his account, together with an affidavit verifying the same.

Leaving and passing of account.
Ib. r. 20.

(2.) An appointment shall thereupon be obtained by the plaintiff or the person having the conduct of the cause or matter for the purpose of passing such account.

593. In case of any such receiver failing to leave such account or affidavit, or to pass such account, or to make any payment or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as may be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and the appointment of another, and payment of costs.

Proceedings on default made in leaving or passing account, etc.
Ib. r. 21.

PART IV.

APPEALS.

CHAPTER XXVIII.

APPEAL TO THE FULL COURT.

594. The right of appeal from decisions of the Judges of the Court is regulated by section 18 of the Supreme Court Ordinance, 1873.

Right of appeal from decisions of Judges.
No. 12 of 1873.

595.—(1.) From and after the commencement of this Code every motion for a new trial, or to set aside a verdict, finding, or judgment, in any cause or matter in which there has been a trial thereof or of any issue therein with a jury shall be heard and determined by the Full Court and not by the Court.

Motions for new trial to be heard by the Full Court.
Jud. Act, 1890, s. 1.

(2.) This section shall extend to every such motion of which notice may have been given, whether before or after the commencement of this Code, but which has not been heard before the commencement of this Code.

596. The Full Court may in any cause or matter, on such terms as may seem just, order a new trial, with or without a stay of proceedings.

General power to order new trial.
H. K. Code, s. 68 (1.)

597.—(1.) Any application for a new trial shall be made on notice of motion filed not later than fourteen days after the date of the verdict; and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion shall be made or taken.

Application for new trial.
Ib. s. 68 (2.)-(4.)
O. 39 r. 3.

(2.) The notice shall state the grounds of the application, and whether all or part only of the judgment or verdict is complained of.

(3.) The notice shall not of itself operate as a stay of proceedings; but any money in Court in the cause or matter shall be retained to abide the result of the motion or the further order of the Full Court.

(4.) After the expiration of such fourteen days, an application for such new trial shall not be admitted, except by special leave of the Full Court, on such terms as may seem just.

Grounds for granting or refusing new trial. *H. K. Code*, s. 68 (7.) *O. 39 r. 6.* **598.**—(1.) A new trial may be granted on the ground of the discovery of new matter or evidence which was not within the knowledge of the applicant, or could not have been adduced by him, at the trial.

(2.) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Court at the trial was not asked to leave to them, unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appears to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Full Court may give final judgment as to part thereof or as to some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.

Ib. r. 8.

(3.) A new trial shall not be granted by reason of the ruling of the Court that the stamp upon any document is sufficient or that the document does not require a stamp.

Power to order new trial on any one question. *Ib. r. 7.* **599.** A new trial may be ordered on any question, whatever may be the grounds for the new trial, without interfering with the finding or decision on any other question.

600. On any motion for a new trial, the Full Court shall have power to order a nonsuit or verdict to be entered, although no leave has been reserved at the trial.

Power to order nonsuit, etc. *H. K. Code*, s. 65 (5.) Order for new trial, etc.

601. In every order for a new trial or to enter a nonsuit or verdict, the grounds on which the order has been made shall be shortly stated therein.

Ord. No. 6 of 1855 s. 27. Costs of first trial where new trial ordered. *Ib. s. 28.*

602. When a new trial is granted on the ground that the verdict was against evidence, the costs of the first trial shall abide the event, unless the Full Court otherwise orders.

Right to jury on second trial. *H. K. Code*, s. 63 (5.)

603.—(1.) On an order for a new trial either party may, if he is entitled thereto under the provisions of Chapter 11, demand a jury for the second trial, though the first was without a jury.

(2.) The Full Court may, if it thinks fit, make it a condition of granting a new trial that the trial shall be with a jury.

Recording of grant of application for new trial. *Ib. s. 63 (8.)*

604. When an application for a new trial is granted, a note thereof shall be made in the Cause-Book, and the Full Court shall give such order in regard thereto as it may deem proper in the circumstances of the case.

Restriction on right of appeal. *36 & 37 Vict.* c. 66 s. 49.

605. No order made by the Court by the consent of parties or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court.

Limit of time for appealing from decision, and security for costs. *O. 58 r. 15.*

606.—(1.) No appeal to the Full Court from any decision of the Court shall, except by special leave of the Full Court, be brought after the expiration of six months.

(2.) The period of six months shall be calculated from the time when the decision was pronounced.

(3.) Such deposit or other security for the costs to be occasioned by an appeal shall be made or given as may be directed under special circumstances by the Full Court.

Appeal to be by re-hearing on motion. *Ib. r. 1.*

607.—(1.) Every appeal to the Full Court from a decision of the Court shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding, other than such notice of motion, shall be necessary.

(2.) The appellant may by the notice of motion appeal from the whole or any part of any decision, and the notice of motion shall state whether the whole or part only of such decision is complained of, and in the latter case shall specify such part.

603.—(1.) The notice of motion shall be served on all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct the notice of motion to be served on all or any parties to the action or other proceeding, or on any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal on such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.

Service of notice of motion for appeal, etc.
O. 58 r. 2.

(2.) The notice of motion may be amended at any time as the Full Court may think fit.

609. The notice of motion shall be a fourteen days' notice.

Length of notice of motion.

610.—(1.) The Full Court shall have all the powers and duties as to amendment and in all other respects of the Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before the Registrar or a commissioner.

Ib. r. 3.

General powers of the Full Court in hearing appeal.

(2.) Such further evidence may be given without special leave on any interlocutory application, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought.

Ib. r. 4.

(3.) On any appeal from a judgment after the trial or hearing of any cause or matter on the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Full Court.

(4.) The Full Court shall have power to draw inferences of fact, and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require.

(5.) The powers aforesaid may be exercised by the Full Court, notwithstanding that the notice of motion may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

611. If, on the hearing of an appeal, it appears to the Full Court that a new trial ought to be had, it shall be lawful for the Full Court, if it thinks fit, to order that the verdict and judgment, or the judgment, as the case may be, shall be set aside, and that a new trial shall be had.

Power to order new trial.

Ib. r. 5.

612. The Full Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

Power as to costs.

Ib. r. 4.

613.—(1.) It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, on the hearing of the appeal, to contend that the decision of the Court should be varied, he shall, within the time specified in the next succeeding section or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention.

Notice of appeal by respondent.

Ib. r. 6.

(2.) The omission to give such notice shall not diminish the powers of the Full Court, but may, in the discretion of the Full Court, be ground for an adjournment of the appeal or for a special order as to costs.

614. Subject to any special order which may be made by the Full Court, notice by a respondent under the last preceding section shall be an eight days' notice.

Length of notice by respondent.

Ib. r. 7.

615. The party appealing from a judgment or order shall leave with the Registrar a copy of the notice of motion to be filed, and the Registrar shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Full Court otherwise directs, but so as not to come into the paper for hearing before the day named in the notice of motion.

Setting down appeal.

Ib. r. 8.

616. When any question of fact is involved in an appeal, the evidence taken in the Court bearing on such question shall, subject to any special order, be brought before the Full Court as follows:—

Evidence on appeal as to question of fact.

Ib. r. 11.

(1.) as to any evidence taken by affidavit, by the production of the affidavits; and

(2.) as to any evidence given orally, by the production of the Judge's notes, or such other materials as the Full Court may deem expedient.

Transcript of proceedings. **617.** Not less than five days before the day fixed for the hearing of the appeal the appellant shall deliver to each of the Judges a complete transcript of the proceedings in the case.
New.

Evidence as to direction of Judge to jury or assessors. **618.** If, on the hearing of an appeal, any question arises as to the ruling or direction of the Judge to a jury or assessors, the Full Court shall have regard to verified notes or other evidence, and to such other materials as the Full Court may deem expedient.
O. 58 r. 13.

Interlocutory order not to prejudice appeal. **619.** No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Full Court from giving such decision upon the appeal as may be just.
Ib. r. 14.

Stay of proceedings. **620.** An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court or the Full Court may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court or the Full Court may direct.
Ib. r. 16.

Mode of making incidental application. **621.** Every application to the Full Court incidental to an appeal shall be by motion, and the provisions of Chapter 10 relating to motions shall apply thereto.
Ib. r. 18.

Interest where execution delayed by appeal. **622.** On any appeal from a decision of the Court interest at the rate for the time being fixed by the Court for such time as execution has been delayed by the appeal shall be allowed, unless the Full Court otherwise orders, and the Registrar may compute such interest without any order for that purpose.
Ib. r. 19.

CHAPTER XXIX.

APPEAL TO THE KING-IN-COUNCIL.

Right of appeal from decisions of the Full Court. **623.** The right of appeal from decisions of the Full Court to His Majesty-in-Council and the procedure on such appeals are regulated by any Royal Instructions or other orders or directions issued by His Majesty in that behalf and for the time being in force and by the practice of the Judicial Committee of His Majesty's Privy Council for the time being in force.

PART V.

MISCELLANEOUS MATTERS.

CHAPTER XXX.

BUSINESS IN CHAMBERS.

General Provisions.

Counsel in Chambers. **624.** In any proceeding in Chambers any party may, if he so desires, be represented by counsel.
O. 55 r. 1 A.

Course of proceeding in Chambers. **625.**—(1.) The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions.
Ib. r. 37.

(2.) Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Court, and, where so directed, copies shall be delivered to the other parties.

(3.) No copies shall be made of any deed or other document where the original can be brought in, unless the Court otherwise directs.

Entry of summons in Summons Book. **626.** At the time when any summons is obtained, an entry thereof shall be made in the Summons Book, stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.
Ib. r. 38.

Administrations and Trusts.

Determination on originating summons of questions relating to estate of **627.** The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as *cestui que trust* under the trust of any deed or instrument,

or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in Chambers for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case may require, that is to say, the determination, without an administration of the estate or trust, of any of the following questions or matters :—

- (1.) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, heir-at-law, or *cestui que trust* ;
- (2.) the ascertainment of any class of creditors, devisees, legatees, next of kin, or others ;
- (3.) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching, when necessary, of such accounts ;
- (4.) the payment into Court of any money in the hands of the executors or administrators or trustees ;
- (5.) a direction to the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees ;
- (6.) the approval of any sale, purchase, compromise, or other transaction ; and
- (7.) the determination of any question arising in the administration of the estate or trust.

deceased person or to express trust.
O. 55 r. 3.

628. Any of the persons mentioned in the last preceding section may in like manner apply for and obtain an order for—

- (1.) the administration of the personal estate of the deceased person ;
- (2.) the administration of the real estate of the deceased person ; and
- (3.) the administration of the trust.

Making of order on originating summons for administration of estate of deceased person or of trust.
Ib. r. 4.

629. The persons to be served with the summons under the last two preceding sections in the first instance shall be the following, that is to say,—

- (1.) where the summons is taken out by an executor or administrator or trustee,—
 - (a.) for the determination of any question under subsection (1.), (5.), (6.), or (7.) of section 627, the persons, or one of the persons, whose rights or interests are sought to be affected ;
 - (b.) for the determination of any question under subsection (2.) of section 627, any member or alleged member of the class ;
 - (c.) for the determination of any question under subsection (3.) of section 627, any person interested in taking such accounts ;
 - (d.) for the determination of any question under subsection (4.) of section 627, any person interested in such money ;
 - (e.) for relief under subsection (1.) of the last preceding section, the residuary legatees, or next of kin, or some of them ;
 - (f.) for relief under subsection (2.) of the last preceding section, the residuary devisees, or heirs, or some of them ;
 - (g.) for relief under subsection (3.) of the last preceding section, the *cestuis que trustent*, or some of them ; and
 - (h.) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur ; and
- (2.) where the summons is taken out by any person other than the executors or administrators or trustees, the said executors or administrators or trustees.

Persons to be served with originating summons:
Ib. r. 5.

630. The Court may direct such other persons to be served with the summons as it may think fit.

Service on other persons.
Ib. r. 6.

631. The application shall be supported by such evidence as the Court may require, and such directions may be given as the Court may think proper for the trial of any questions arising thereout.

Evidence in support of application.
Ib. r. 7.

632. It shall be lawful for the Court upon such summons to pronounce such judgment as the nature of the case may require.

Judgment upon summons.
Ib. r. 8.

Carriage and service of judgment. **633.** The Court may give any special directions relating to the carriage or execution of the judgment, or the service thereof on persons not parties, as it may think just.
O. 55 r. 9.

Right of the Court to refuse to order administration. **634.** It shall not be obligatory on the Court to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of the estate of any deceased person or of any trust, if the questions between the parties can be properly determined without such judgment or order.
Ib. r. 10.

Orders which may be made on application for administration or execution of trusts, where no accounts or insufficient accounts have been rendered. **635.** On an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court may, in addition to any other powers vested in it,—

- (1.) order that the application shall stand over for a certain time, and that the executors or administrators or trustees shall render to the applicant a proper statement of their accounts, with an intimation that, if that is not done, they may be made to pay the costs of the proceedings; or
- (2.) when necessary, to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without the special leave of the Court.

Interference with discretion of executor, etc. **636.** The issue of a summons under section 627 shall not interfere with or control any power or discretion vested in any executor or administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.
Ib. r. 12.

Application by summons under Trustee Ordinance, 1901. **637.** Any of the following applications under the Trustee Ordinance, 1901, may be made by summons:—

- (1.) an application for the appointment of a new trustee, with or without a vesting or other consequential order;
- (2.) an application for a vesting or other order consequential on the appointment of a new trustee; and
- (3.) an application for a vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or for the suing for or recovering any chose in action.

Charitable Trusts.

Application in Chambers for relief relating to charity with annual income exceeding \$300. **638.**—(1.) Where the appointment or removal of any trustee, or any other relief, order, or direction relating to any charity of which the gross annual income for the time being exceeds three hundred dollars is deemed desirable, it shall be lawful for any person mentioned in the next succeeding section to make application by summons (without any information, action, or petition) to the Court in Chambers for such relief, order, or direction as the nature of the case may require.
16 & 17 Vict. c. 137 s. 28.

(2.) The Court may proceed upon and dispose of such application in Chambers, unless it thinks fit otherwise to direct, and shall and may have and exercise thereupon all such jurisdiction, power, and authority, and make such orders and give such directions relating to the matter of such application, as might now be exercised, made, or given by the Court in an action regularly instituted, or upon petition, as the case may require: Provided that it shall be lawful for the Court, where under the circumstances of any such application it may see fit, to direct that for obtaining the relief, order, or direction sought for by such application an information, action, or petition, as the case may require, shall be brought or presented and prosecuted, and to abstain from further proceeding on such application.

Persons by whom application relating to charity may be made. **639.** An application under the last preceding section may be made by the Attorney General, or by all or any one or more of the trustees or persons administering or claiming to administer, or interested in, the charity which is the subject of the application, or by any two or more inhabitants of any city, town, village, or place within which the charity is administered or applicable.
Ib. s. 43.

Power to Attorney **640.** It shall be lawful for the Attorney General acting *ex officio*, to make application by petition to the

Court with respect to any charity under the provisions of the Act of Parliament 52 George III, Chapter 101, entitled "An Act to provide a Summary Remedy in Cases of Abuses of Trusts created for Charitable Purposes."

General to apply to the Court under 52 Geo. 3 c. 101. 16 & 17 Vict. c. 137 s. 43.

Sale, Foreclosure, and Redemption.

641.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action or other proceeding brought by him either for redemption alone, or for sale alone, or for redemption or sale in the alternative.

Power to order sale instead of foreclosure of mortgaged property, etc. 44 & 45 Vict. c. 41 s. 25.

(2.) In any action or other proceeding, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action or proceeding, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks just, including, if it thinks fit, the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action or other proceeding brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any sale under this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

642. If, in any cause or matter relating to immovable property, it appears necessary or expedient that the property or any part thereof should be sold, the Court may order the same to be sold, and any party bound by the order and in possession of the property, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser or such other person as may be directed by the order.

Power to order sale of immovable property generally. O. 51 r. 1.

643. Where an action of ejectment is brought by any mortgagee, his heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged immovable property, and no action is then depending in the Court for or touching the foreclosing or redeeming of the mortgaged property, if the person having right to redeem the mortgaged property, and who appears and becomes defendant in the action, at any time pending the action, pays to the mortgagee, or, in case of his refusal, pays into Court, all the principal money and interest due on the mortgage, and also all such costs as have been expended in any action upon the mortgage, (such money for principal, interest, and costs to be ascertained and computed by the Registrar), the money so paid to the mortgagee or into Court shall be deemed and taken to be in full satisfaction and discharge of the mortgage; and the Court shall discharge such mortgagor or defendant of and from the same accordingly, and shall, by order, compel the mortgagee, at the costs and charges of the mortgagor, to assign, surrender, or re-convey the mortgaged property and such estate and interest as the mortgagee has therein, and deliver up all deeds, evidences, and writings in his custody relating to the title of the mortgaged property to the mortgagor who has paid such money, his heirs, executors, or administrators, or to such other person or persons as he or they may for that purpose nominate or appoint.

Right of mortgagor in ejectment by mortgagee to pay mortgage money, etc., and to have re-conveyance. 15 & 16 Vict. c. 76 s. 219.

644. Nothing in the last preceding section shall extend to any case where the person against whom the redemption is prayed, by writing under his hand or the hand of his agent or solicitor, to be delivered, before the money is paid into Court, to the solicitor for the other side, insists either that the party praying a redemption has not a right to redeem or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage or are admitted on the other side; or to any case where the right of redemption to the mortgaged property in question in any action is controverted or ques-

Cases excepted from operation of section 643. Ib. s. 220.

tioned by or between different defendants in the same action; or shall be any prejudice to any subsequent mortgage or incumbrance.

Originating summons for sale, foreclosure, etc. *O. 55 r. 5 A.* **645.** Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, or delivery of possession by the mortgagee.

Persons to be served with summons. *Ib. r. 5 B.* **646.** The persons to be served with the summons under the last preceding section shall be such persons as would be the proper defendants to an action for the like relief as that specified by the summons.

Assistance of Experts.

Power to Judge to obtain assistance of accountant, etc. *Ib. r. 19.* **647.**—(1.) A Judge in Chambers may, in such way as he thinks fit, obtain the assistance of any accountant, merchant, engineer, actuary, or other scientific person, the better to enable any matter at once to be determined, and he may act upon the certificate of any such person.

15 & 16 Vict. c. 80 s. 43. (2.) The allowances in respect of fees to such persons shall be regulated by the Registrar, subject to an appeal to the Judge, whose decision shall be final.

Proceedings relating to Infants, etc.

Evidence on application for appointment of guardian and for maintenance. *O. 55 r. 25.* **648.** On any application for the appointment of a guardian of an infant and for an allowance for the maintenance of an infant, the evidence shall show—

- (1.) the age of the infant;
- (2.) the nature and amount of the infant's fortune and income; and
- (3.) what relations the infant has.

Appointment of guardian *ad litem* in proceedings in Chambers. *Ib. r. 27.* **649.** At any time during the proceedings in Chambers under any judgment or order, the Judge may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind, not so found by inquisition, who has been served with notice of such judgment or order.

Attendances.

Classifying interests of parties. *Ib. r. 40.* **650.**—(1.) Where, at any time during the prosecution of a judgment or order, it appears to the Court, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, the Court may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings.

(2.) Where the parties constituting any class cannot agree upon the solicitor to represent them, the Court may nominate such solicitor for the purpose of the proceedings before it.

(3.) Where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Court, with respect to which the nomination has been made, and all such further costs as may be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated.

Requiring separate solicitor to represent parties. *Ib. r. 41.* **651.** Whenever in any proceeding in Chambers the same solicitor is employed for two or more parties, the Court may in its discretion require that any of the said parties shall be represented before it by a separate solicitor, and adjourn such proceedings until such party is so represented.

Attendance of parties not directed to attend. *Ib. r. 42.* **652.** Any of the parties other than those who have been directed to attend may attend at their own expense, and on paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action, either in addition to or in substitution for any of the parties who have been directed to attend.

653. An order shall be drawn up, on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who have been directed to attend and such of them, if any, as have elected to attend at their own expense, and such order shall be recited in the Registrar's certificate.

Drawing up of order stating parties who have been directed to attend.
O. 55 r. 43.

Advertisements for Claimants and Creditors.

654. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order.

Exclusion of claimants not coming in to prove within time fixed.
Ib. r. 44.

655. Where an advertisement is required for the purpose of any proceeding in Chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed.

Number of advertisements.
Ib. r. 45.

656. The advertisement for claimants shall be prepared by the party prosecuting the judgment or order and submitted to the Registrar for approval, and, when approved, shall be signed by him, and such advertisement shall be published in the Gazette.

Advertisement for claimants.
Ib. r. 46.
Schedule: Form No. 46.

657. The advertisement for creditors shall be prepared and signed by the solicitor of the party prosecuting the judgment or order, and such advertisement shall be published in the Gazette.

Advertisement for creditors.
Ib. r. 46 A.
Schedule: Form No. 47.

658.—(1.) An advertisement for claimants or creditors shall fix a time within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased person, or to such other party as the Court may direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security, if any, held by him.

Particulars of advertisement.
Ib. r. 47.

(2.) At the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

659. No creditor need make any affidavit or attend in support of his claim (except to produce his security), unless he is served with a notice requiring him to do so as hereinafter provided.

Non-necessity of affidavit or attendance by creditor.
Ib. r. 49.

660. Every creditor shall produce the security, if any, held by him before the Court at such time as may be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing to be given by the executor or administrator of the deceased person, or by such other party as the Court may direct, produce all other deeds and documents necessary to substantiate his claim before the Court at such time as may be specified in such notice.

Duty of creditor to produce security, if any, and, if required, evidence of debt.
Ib. r. 50.

661. In case any creditor refuses or neglects to comply with the requirements of the last preceding section, he shall not be allowed any costs of proving his claim, unless the Court otherwise directs.

Effect of creditor refusing to produce security, etc.
Ib. r. 51.

662. The executor or administrator of the deceased person, or such other party as the Court may direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased person is justly liable; and he shall, at least seven days prior to the time appointed for adjudication, file an affidavit, to be made by the executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the Court may direct, verifying a list of the claims, particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased person is, in the opinion of the deponent, justly liable, and his belief that such claims, or parts thereof respectively,

Examination and verification of claims.
Ib. r. 52.

are justly due and proper to be allowed, and the reasons for such belief.

- 663.** In case the Court thinks fit so to direct, the making of the affidavit referred to in the last preceding section shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Court may give.
- 664.** Where, on the day appointed for adjudication, any of the claims remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.
- 665.** At the time appointed for adjudication, or at any adjournment thereof, the Court may, in its discretion, allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as it may think fit, and may, if it thinks fit, require any creditor to attend and prove his claim or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.
- 666.**—(1.) Notice shall be given by the executor or administrator, or such other party as the Court may direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the Court may direct to attend and prove his claim or such part thereof as is not allowed by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon has been adjourned.
- (2.) In case any creditor does not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.
- 667.** After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the Court thinks fit to give special leave, on application made by summons, and then on such terms and conditions as to costs and otherwise as the Court may think fit.
- 668.** A creditor who has come in and established his debt in Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Court, unless it thinks fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.
- 669.** A list of all claims allowed shall, when required by the Court, be made out and left in the Registry by the person who examines the claims.
- 670.** Every notice by this Chapter required to be given to claimants or creditors shall, unless the Court otherwise directs, be served on the claimant or creditor at the address given in the claim sent in by him pursuant to the advertisement, or, in case such claimant or creditor has employed a solicitor, on such solicitor at the address given by him.
- Interest.*
- 671.** Where a judgment or order is given or made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others at the rate for the time being fixed by the Court, from the date of the judgment or order.
- 672.** A creditor whose debt does not carry interest, who comes in and establishes the same in Chambers under a judgment or order, shall be entitled to interest on his debt at the rate for the time being fixed by the Court from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

673. Where a judgment or order is given or made directing an account of legacies, interest shall be computed on such legacies after the rate for the time being fixed by the Court from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

Interest on legacy.
O. 55 r. 64.

Certificate of the Registrar.

674.—(1.) The directions to be given for or relating to any proceedings before the Registrar shall require no particular form, but the result of such proceedings shall be stated in the shape of a concise certificate to the Judge.

Nature of certificate.
Ib. r. 65.

(2.) It shall not be necessary for the Judge to sign the certificate, and unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the Judge.

675. The certificate of the Registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment or order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

Reference in certificate to judgment, etc.
Ib. r. 66.

676.—(1.) Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate.

Contents of certificate in case of account.
Ib. r. 68.

(2.) The account and the transcript, if any, referred to by the certificate shall be filed therewith.

(3.) No copy of any such account shall be required to be taken by any party.

677. Any party may, before the proceedings before the Registrar are concluded, take the opinion of the Court upon any matter arising in the course of the proceedings without any fresh summons for the purpose.

Taking opinion of the Court.
Ib. r. 69.

678. Every certificate, with the account, if any, to be filed therewith, shall be filed in the Registry, and shall thereupon be binding on all parties to the proceedings, unless discharged or varied on application by summons.

Effect of certificate.
Ib. r. 70.

679. Any application to discharge or vary a certificate shall be made before the expiration of twenty-one days after the filing thereof.

Application to discharge or vary certificate.
Ib.

680. The Court may, if the special circumstances of the case require it, on application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

Power to discharge or vary certificate at any time.
Ib. r. 71.

Further Consideration.

681.—(1.) Where any matter originating in Chambers has, at the original or any subsequent hearing, been adjourned for further consideration in Chambers, such matter may be brought on for further consideration by a summons to be taken out by the party having the conduct of the matter, after the expiration of fourteen days and within twenty-one days from the filing of the Registrar's certificate, and after the expiration of such twenty-one days by a summons to be taken out by any other party.

Further consideration of matter originating in Chambers.
Ib. r. 72.

(2.) Such summons shall be in the following form:—
“That this matter, the further consideration whereof was adjourned by the order of the day of , 19 , may be further considered,” and shall be served ten days before the return.

(3.) This section shall not apply to any matter the further consideration whereof has, at the original or any subsequent hearing, been adjourned into Court.

Registering and Drawing up of Orders.

Keeping of notes of proceedings in Chambers. *O. 55 r. 73.* **682.** Notes shall be kept of all proceedings in Chambers with proper dates, so that all such proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

Drawing up and entering of order. *Ib. r. 74.* **683.** Every order made in Chambers shall, unless the Court otherwise directs, be drawn up or settled and signed by the Registrar; and all orders so drawn up shall be filed in the Registry.

Evidence of order. *Ib. r. 74 A.* **684.** An order signed by the Registrar, or a note or memorandum indorsed on the summons upon which any such order was made and signed or initialled by the Judge, shall be sufficient evidence of the order having been made.

Delegation of powers and duties. *New.* **685.** The Court may in any case, if it thinks fit, direct that any of the powers and duties conferred and imposed on the Court by the preceding provisions of this Chapter shall be exercised and performed by the Registrar, but subject to the right of the parties to bring any particular point before the Court.

CHAPTER XXXI.

VARIOUS PROVISIONS.

Sittings of the Court.

Appointment of sittings. *H. K. Code, s. 52 (2).* **686.** The Court may, in its discretion, appoint any day or days from time to time for the trial and hearing of causes and matters, as circumstances may require.

Publicity of sittings. *Ib. s. 52 (3).* **687.** The sittings of the Court for the trial and hearing of causes and matters shall ordinarily be public; but the Court may, if it thinks fit, try or hear any particular cause or matter in the presence only of the parties and their counsel and solicitors and the officers of the Court.

Order of business at sitting. *Ib. s. 52 (4).* **688.** Subject to any special arrangements for any particular day, the business of the day at any sitting of the Court shall be taken, as nearly as circumstances permit, in the following order:—

- (1.) at the commencement of the sitting, judgments shall be delivered in causes or matters standing over for that purpose and appearing for judgment in the trial paper;
- (2.) *ex parte* motions or motions by consent shall then be taken in the order in which the motion papers have been filed;
- (3.) opposed motions on notice, and orders to show cause returnable on that day, shall then be taken, in the order in which these matters respectively stand in the trial paper; and
- (4.) the causes in the trial paper shall then be called on, in their order, unless the Court sees fit to vary that order.

Seal of the Court.

Sealing and filing of documents. *Ib. s. 96.* **689.** Every writ, summons, warrant, judgment, rule, order, notice, and other document issuing from the Court shall be sealed with the seal of the Court, and be returned for the purpose of being filed in the Registry.

Cause-Book.

Keeping and form of Cause-Book. *Ib. s. 6.* **690.**—(1.) The Registrar shall keep a book called the Cause-Book, which shall contain a register of the proceedings in all actions brought in the Court.

Schedule: Form No. 48. (2.) Every action or other proceeding, however instituted, under the provisions of this Code shall be numbered in each year according to the order in which the same is commenced.

Certain General Powers of the Court.

General power of adjournment. *Ib. s. 90.* *O. 36 r. 34.* **691.** The Court may, if it thinks it expedient for the interests of justice, postpone or adjourn the trial or hearing of any cause, matter, proceeding, or application for such time and on such terms, if any, as it may think just.

Power to allow income of property *pendente lite*. *O. 50 r. 9.* **692.** Where any immovable or movable property forms the subject of any proceedings in the Court, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Court may, at any

time after the commencement of the proceedings, allow to the parties interested therein, or to any one or more of them, the whole or a part of the annual income of the immovable property, or a part of the movable property, or the whole or a part of the income thereof, up to such time as the Court may direct.

693. Whenever it appears to the Court (except when sitting in its Admiralty jurisdiction) that allowances of any kind, as fixed by former statutes, ought generally or in any particular case to be increased or lessened in proportion to the value of money within this Colony, or the fluctuations thereof, or the difference of currency, it shall be lawful for the Court to authorize or direct the same respectively to be so increased or lessened accordingly.

Increase or lessening of statutory allowances. *Ord. No. 3 of 1858 s. 10.*

Summary Application in Certain Case.

694. All proceedings in cases within the operation of section 504 of the Merchant Shipping Act, 1894, of the Imperial Parliament, and of any enactments passed or to be passed for amending the same, shall be by summary application to the Court and by way of motion supported by affidavit; and the Court shall, if it thinks fit, by rule or order, give such relief as by the said section any such competent Court as is mentioned in the Act has power to give.

Proceedings for limiting shipowner's responsibility. *57 & 58 Vict. c. 60. Ord. No. 5 of 1856 s. 5.*

Irregularity in Proceedings.

695. Non-compliance with any of the provisions of this Code, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court so directs, but such proceeding may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court may think fit.

Effect of non-compliance with the Code, etc. *O. 70 r. 1.*

696. No application to set aside any proceeding for irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

Time for applying to set aside proceeding for irregularity. *Ib. r. 2.*

697. Where an application is made to set aside any proceeding for irregularity, the several objections to be insisted upon shall be stated in the summons or notice of motion.

Statement of grounds of application. *Ib. r. 3.*

698. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

Costs on dismissal of summons to set aside proceeding. *Ib. r. 4.*

Provisions relating to Time.

699.—(1.) Nothing in this Code shall affect the power of the Court to enlarge or abridge the time appointed or allowed for the doing of any act or the taking of any proceeding on such terms as justice may require.

Power to enlarge or abridge time for doing act or taking proceeding. *H. K. Code, s. 92.*

(2.) Where the Court is by this Code or otherwise authorized to appoint the time for the doing of any act or the taking of any proceeding, or to enlarge the time appointed or allowed for that purpose by this Code or otherwise, the Court may further enlarge any time so appointed or enlarged by it, on such terms as may seem just, whether the application for further enlargement is made before or after the expiration of the time already allowed: Provided that no such further enlargement shall be made unless it appears to the Court to be required for the purposes of justice, and not sought merely for delay.

700. The time for filing or amending any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court.

Enlargement of time by consent. *O. 64 r. 8.*

701.—(1.) Where by this Code, or by any special order, or by the course of the Court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the computation of such limited time shall not include the day of such date or of the happening of such event, but shall commence at the beginning of the next following day, and the act or proceeding must be done or taken at latest on the last day of such limited time, according to such computation.

Rules for computation of time limited for doing act or taking proceeding. *H. K. Code, s. 93.*

(2.) Where the limited time so appointed or allowed is less than six days, the following days shall not be reckoned

in the computation of such time, namely, Sunday, Good Friday, Monday and Tuesday in Easter Week, Christmas Day, and the day next before and the day next after Christmas Day, and any public holiday or day set apart as a fast or thanksgiving day.

(3.) Where the limited time so appointed or allowed expires on one of the days last mentioned, the act or proceeding shall be considered as done or taken in due time if done or taken on the next day afterwards that is not one of the last-mentioned days.

(4.) The day on which an order that a plaintiff shall give security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of the time allowed to the defendant for filing his statement of defence.

No. 16 of
1898.

(5.) Nothing in the preceding provisions relating to time shall affect the provisions of the Supreme Court (Vacations) Ordinance, 1898.

Commissioners for Oaths.

Appoint-
ment,
powers, etc.,
of Commis-
sioners for
Oaths.
16 & 17 Viet.
c. 78 ss. 1-5
and 52 & 53
Viet. c. 10 s. 1.

702.—(1.) The Chief Justice may from time to time, by a commission signed by him, appoint fit and proper persons to be commissioners to administer oaths and take declarations, affirmations, and attestations of honour in the Court, and may revoke any such appointment.

(2.) Every person so appointed shall be styled a Commissioner for Oaths, and shall have all the powers and discharge all the duties which now belong to the office of a commissioner to administer oaths.

Powers of
certain of-
ficers of the
Court, etc., to
administer
oaths.
Ib. s. 2.

703. Every person who, being an officer of or performing duties in relation to the Court, is for the time being so authorized by the Court or by or in pursuance of any rules or orders regulating the procedure of the Court, and every person who is directed to take an examination in any cause or matter in the Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

Attachment.

Application
for leave to
issue writ of
attachment.
O. 44 r. 2.

704. No writ of attachment shall be issued without the leave of the Court, to be applied for on notice to the party against whom the attachment is to be issued.

Effect of writ
of attach-
ment.
Ib. r. 1.

705. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court in its equity jurisdiction formerly had.

Limited pri-
vilege of ju-
dicial officer
from arrest.
Indian Code,
s. 642.

706. No Judge, Magistrate, or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from his Court.

Saving of
certain pro-
visions of 8
& 9 Will. 3
c. 11.
Ord. No. 6 of
1855 s. 81.

Saving.

707. Nothing in this Code shall affect the provisions of the Act of Parliament 8 and 9 William III, Chapter 11, entitled "An Act for the better preventing Frivolous and Vexatious Suits," as to the assignment or suggestion of breaches or as to judgment for a penalty as a security for damages in respect of further breaches.

Publication of Notices.

General
mode of
publishing
notice.
H. K. Code,
s. 97.

708. In any case in which the publication of any notice is required under the provisions of this Code, the same may be made by advertisement in the Gazette, unless otherwise provided by this Code or otherwise ordered by the Court.

Forms.

Use of forms.
Schedule.
Ib. s. 98.

709.—(1.) The forms contained in the Schedule to this Code may be used in the cases to which they respectively have reference, with such variations and additions as the circumstances of the particular case may require, and shall, as regards the form thereof, be valid and sufficient.

(2.) The Chief Justice may from time to time alter the said forms or any of them or substitute other forms for them or any of them; and every such altered or substituted form shall be published in the Gazette.

(3.) So far as the said forms may be incomplete, all forms at present in use in the Court, with such variations and additions as the circumstances of the particular case may require, may be used for the purpose of carrying out the provisions of this Code, and shall, as regards the form thereof, be valid and sufficient.

Temporary Provisions.

710.—(1.) This Code shall apply, so far as may be practicable, to all proceedings taken after it comes into operation in all causes and matters then pending.

(2.) If in any case a question arises as to such application such question shall be determined by the Court in a summary manner.

711. This Code shall come into operation on the 1st day of July, 1901.

Passed the Legislative Council of Hongkong, this 14th day of February, 1901.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 12th day of March, 1901.

J. H. STEWART LOCKHART,
Colonial Secretary.

SCHEDULE.

Section 700.

FORMS.

TABLE OF FORMS.

1. Writ of Summons.
2. Specially Indorsed Writ of Summons.
3. Originating Summons *Inter Partes*.
4. Originating Summons not *Inter Partes*.
5. *Ex Parte* Originating Summons.
6. Notice of Appointment to hear Originating Summons.
7. Writ of Summons for Service out of the Jurisdiction.
8. Specially Indorsed Writ of Summons for Service out of the Jurisdiction.
9. Memorandum of Appearance.
10. Affidavit for Entry of Appearance as Guardian.
11. Memorandum of Notice of Judgment [*or Order.*]
12. Third Party Notice.
13. Summons for Third Party Directions.
14. Order for Third Party Directions.
15. Statement of Claim.
16. Statement of Defence.
17. Counterclaim.
18. Reply.
19. Statement of Defence, including an Objection in Point of Law.
20. Interrogatories.
21. Answer to Interrogatories.
22. Affidavit as to Documents.
23. Entry of Special Case.
24. Notice of Motion.
25. Summons *Inter Partes*.
26. *Ex Parte* Summons.
27. Order.
28. *Præcipe* for Writ of Execution of Judgment for Immovable Property.
29. Writ of Execution of Judgment for Immovable Property.
30. Writ of Execution of Judgment for Money by Attachment of Property.
31. Prohibitory Order for Attachment of Movable Property in Execution.
32. Prohibitory Order for Attachment of Immovable Property in Execution.
33. Affidavit in Support of Garnishee Order.
34. Garnishee Order attaching Debt.
35. Garnishee Order Absolute.
36. Order for Judgment Creditor to appear on Hearing of Application by Prisoner for Debt to be discharged.
37. Order for Discharge of Prisoner for Debt from Prison.
38. Writ of Foreign Attachment.
39. Bond in Case of Foreign Attachment.
40. Affidavit on Interpleader.
41. Order for Issue of Warrant for Arrest of Absconding Defendant.
42. Warrant for Arrest of Absconding Defendant.
43. Order for Giving of Bail by Absconding Defendant.
44. Bail-Bond of Absconding Defendant.
45. Warrant for Bailiff to call upon Defendant to give Security to produce Property.
46. Advertisement for Claimants not being Creditors.
47. Advertisement for Creditors.
48. Cause-Book.

Memorandum to be subscribed on the Writ.

NOTE.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hongkong.

Indorsements to be made on the Writ before the issue thereof.

Statement of Claim.

The plaintiff's claim is ¹

Particulars.

(Signed.)

¹ State concisely the nature of the claim.

And the sum of \$ for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the plaintiff, who resides at ² , [or This writ was issued by E.F., solicitor for the plaintiff, who resides at ² ,]

² Mention the city, town, or village, and also the name of the street and number of the house, if any.

Indorsement to be made on the Writ after service thereof.

This writ was served by me at defendant C.D. on day, the day of , 19 .

Indorsed the day of , 19 .

(Signed.)

(Address.)

FORM NO. 3.

Originating Summons Inter Partes.

Section 26. App. K. Form 1A.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between A.B., Plaintiff,
and

C.D., Defendant. ¹

Let C.D., of , within eight days after the service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued on the application of of , who claims to be ² , for the determination of the following questions ³ :—

¹ If the question to be determined arises in the administration of an estate or a trust, entitle it also in the matter of the estate or trust.

Dated the day of , 19 .

² State concisely the nature of the claim.

This summons was taken out by of solicitor for the above-named

³ State the questions.

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hongkong.

NOTE.—If the defendant does not enter an appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the Court may think just and expedient.

FORM NO. 4.

Originating Summons not Inter Partes.

Section 26. App. K. Form 1 B.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

In the Matter of the Trusts of the Will of A.B.

And in the Matter of the Trustee Ordinance, 1901.

[or as the case may be].

To , of

Let , of , within eight days after the service of this summons on him, inclusive of the day

of such service, cause an appearance to be entered for him to this summons, which is issued on the application of

¹ State the object of the application. , of , for an order that ¹
Dated the day of , 19 .

This summons was taken out by , of , solicitor for the above-named

The respondent may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hongkong.

NOTE.—If the respondent does not enter an appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the Court may think just and expedient.

Section 26.
App. K.
Form 1 H.

FORM No. 5.

Ex Parte Originating Summons.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

In the Matter of *A.B.*, an Infant.

To , of

Let all parties concerned attend at the Chambers of the Honourable , at the Supreme Court, at o'clock m. on day, the day of 19 , on the hearing of an application on the part of the above-named *A.B.*, an infant, by *C.D.*, his next friend, that ¹

¹ State the object of the application.

Dated the day of , 19 .

This summons was taken out by , of , solicitor for the applicant.

Section 29.
App. K.
Form 1 F.

FORM No. 6.

Notice of Appointment to hear Originating Summons.

[Title as in Form No. 3 or Form No. 4.]

To , of ¹

¹ Insert the name of the defendant or respondent.

Take notice that you are required to attend at the Chambers of the Honourable , at the Supreme Court, at o'clock m. on day, the day of 19 , for the hearing of the originating summons issued herein on the day of 19 , and that if you do not attend, either in person or by solicitor, at the place and time mentioned, such order will be made and proceedings taken as the Court may think just and expedient.

Dated the day of , 19 .

(Signed.)

Solicitor for the plaintiff [or applicant].

Section 42.
App. A,
Part I,
Form 5.

FORM No. 7.

Writ of Summons for Service out of the Jurisdiction.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Edward, by the Grace of God, &c.

To *C.D.*, of

Insert the number of days directed by the Court.

We command you that within ¹ days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of *A.B.*; and take notice that, in default of your so doing, the Court may give leave to the plaintiff to proceed *ex parte*.

Witness the Honourable , Chief Justice
of Our said Court, the day of , 19 .

Memorandum to be subscribed on the Writ.

NOTE.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hongkong.

Indorsements to be made on the Writ before the issue thereof

Statement of Claim.

The plaintiff's claim is¹

This writ was issued by the plaintiff, who resides at
 , [or This writ was issued by E.F., solicitor for the
 plaintiff, who resides at² .]

¹ State concisely the nature of the claim.

² Mention the city, town, or village, and also the name of the street and number of the house, if any.

Indorsement to be made on the Writ after service thereof.

This writ was served by me at on the defendant
 C.D. on day, the day of , 19
 Indorsed the day of , 19 .

(Signed.)

(Address.)

NOTE.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction.

FORM No. 8.

Specially Indorsed Writ of Summons for Service out of the Jurisdiction.

Section 42.
 APP. A,
 Part I,
 Form 6.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between A.B., Plaintiff,

and

C.D., Defendant.

Edward, by the Grace of God, &c.

To C.D., of

We command you that within¹ days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of A.B.; and take notice that, in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

¹ Insert the number of days directed by the Court.

Witness the Honourable , Chief Justice
 of Our said Court, the day of , 19 .

Memorandum to be subscribed on the Writ.

NOTE.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may appear hereto by entering an appearance, either personally or by solicitor, at the Registry of the Supreme Court in Victoria, Hongkong.

Indorsements to be made on the Writ before the issue thereof.

Statement of Claim.

The plaintiff's claim is¹

Particulars.

(Signed.)

¹ State concisely the nature of the claim.

And the sum of \$ for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within² days from the service hereof, further proceedings will be stayed.

² Insert the number of days directed by the Court.

* Mention the city, town, or village, and also the name of the street and number of the house. This writ was issued by the plaintiff, who resides at ³, [or This writ was issued by E.F., solicitor for the plaintiff, who resides at ².]

Indorsement to be made on the Writ after service thereof.

This writ was served by me at _____ on the defendant C.D. on _____ day, the _____ day of _____, 19 .

Indorsed the _____ day of _____, 19 .

(Signed.)

(Address.)

NOTE.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants is or are out of the jurisdiction.

Section 46.
App. A,
Part II,
Form 1.

FORM No. 9.

Memorandum of Appearance.

Action No. _____ of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between A.B., Plaintiff,
and
C.D., Defendant.

Enter an appearance for the defendant C.D. in this action.

Dated the _____ day of _____, 19 .

(Signed.) C.D., of

[or

E.F.,

Solicitor for the defendant C.D.]

Section 70.
App. A,
Part II,
Form 8.

FORM No. 10.

Affidavit for Entry of Appearance as Guardian.

Action No. _____ of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between A.B., Plaintiff,
and
C.D., Defendant.

I, _____, of _____, make oath and say as follows:—

E.F., of _____, to the best of my knowledge, information, and belief, is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [or matter] adverse to that of the said infant, and the consent of the said E.F. to act as such guardian is hereto annexed.

Sworn, &c.

[To this affidavit must be annexed the document signed by the guardian in testimony of his consent to act.]

Section 81.
App. G,
Form 28.

FORM No. 11.

Memorandum of Notice of Judgment [or Order.]

Take notice that, from the time of the service of this notice, you [or, as the case may be, the infant or the person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [or the said infant or the said person of unsound mind] had been originally made a party, and that you [or the said infant or the said person of unsound mind] may, on entering an appearance at the Registry of the Supreme Court in Victoria, Hongkong, attend the proceedings under the within-mentioned judgment [or order], and that you [or the said infant or the said person of unsound mind] may, within one month after the service of this notice, apply to the Court to add to the said judgment [or order].

FORM No. 12.

*Third Party Notice.*Section 85.
App. B,
Part II,
Form 1.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Notice filed , 19

To E.F., of

Take notice that this action has been brought by the plaintiff against the defendant (as surety for *M.N.*, upon a bond conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are [his co-surety under the said bond; or also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , 19 .].

Or [as acceptor of a bill of exchange for \$5,000, dated the day of , 19 , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.* or your liability to the defendant *C.D.*, you must cause an appearance to be entered for you within eight days after the service of this notice on you, inclusive of the day of such service.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained by the plaintiff against the defendant *C.D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to Chapter 2 of the Code of Civil Procedure.

Dated the day of , 19 .

(Signed.) *C.D.*, of

[or

G.H.,Solicitor for the defendant *C.D.*]

NOTE.—Appearance is to be entered at the Registry of the Supreme Court in Victoria, Hongkong.

FORM No. 13.

*Summons for Third Party Directions.*Section 89.
App. K,
Form 4 K.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.*To* , of

Let all parties concerned attend at the Chambers of the Honourable , at the Supreme Court, at o'clock m. on day, the day of , 19 , on the hearing of an application on the part of for an order for third party directions as follows:—that the

defendant file a statement of his claim against the said third party within _____ days from this date, who shall plead thereto within _____ days; and that the said third party be at liberty to appear at the trial of this action, and take such part as the Court shall direct, and be bound by the result of the trial; and that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

Dated the _____ day of _____, 19 _____.

This summons was taken out by _____ solicitor for _____

Section 90.
App. K,
Form 4 F.

FORM No. 14.
Order for Third Party Directions.

Action No. _____ of 19 _____.

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

¹ Mention
the Judge.

¹ in Chambers.

Upon hearing the solicitors for the plaintiff, defendant, and third party, It is ordered that the defendant file a statement of his claim against the said third party within _____ days from this date, who shall plead thereto within _____ days; and that the said third party be at liberty to appear at the trial of this action, and take such part as the Court shall direct, and be bound by the result of the trial; and that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto; and that the costs of this application be _____

Dated the _____ day of _____, 19 _____.

Section 135.
App. E,
Sec. II.

FORM No. 15.
Statement of Claim.

Action No. _____ of 19 _____.

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars :—

1899. 1st January to 31st May. To	\$	c.
rebuilding house at Victoria as per contract dated the 24th December, 1898		5,400 00
To extras, as per account delivered		243 00
		5,643 00
Paid on account		3,000 00
		2,643 00

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1899, till payment or judgment.

(Signed.)

FORM No. 16.
Statement of Defence.

Section 143,
App. E,
Sec. II.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Statement of Defence.

The defendant says that—

1. Except as to \$200, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to \$200, parcel of the money claimed, the defendant brings [*or has brought*] into Court \$200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

(Signed.)

FORM No. 17.
Counterclaim.

Section 163,
App. E,
Sec. II.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Counterclaim.

The defendant says that—

1. The contract mentioned in the statement of claim herein contained a clause whereby it was provided that the plaintiff should complete the works by the 31st March, 1899, or in default pay to the defendant \$10 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st May, 1899.

The defendant counterclaims \$610.

(Signed.)

FORM No. 18.
Reply.

Section 168,
App. E,
Sec. II.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Reply.

The plaintiff says that—

1. As to the first paragraph of the statement of defence he joins issue.

2. As to the second paragraph thereof, he accepts the \$200 in satisfaction.

The plaintiff as to the counterclaim says that—

3. The defendant waived the liquidated damages by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed.)

NOTE.—The latter part of this Form applies only where the counterclaim has been filed before the reply.

Section 174.
App. E,
Sec. III.

FORM NO. 19.

Statement of Defence, including an Objection in Point of Law.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Statement of Defence.

The defendant says that—

1. The goods were not supplied to *E.F.* on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed.)

Section 188.
App. B,
Part II,
Form 6.

FORM NO. 20.

Interrogatories.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and

C.D., *E.F.*, and *G.H.*, Defendants.

Interrogatories on behalf of the above-named plaintiff [*or* defendant *C.D.*] for the examination of the above-named defendants *E.F.* and *G.H.* [*or* plaintiff].

1. Did not, etc.
 2. Has not, etc.
- etc., etc., etc.

[The defendant *E.F.* is required to answer the interrogatories numbered .]

[The defendant *G.H.* is required to answer the interrogatories numbered .]

Section 192.
App. B,
Part II,
Form 7.

FORM NO. 21.

Answer to Interrogatories.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and

C.D., *E.F.*, and *G.H.*, Defendants.

The answer of the above-named defendant *E.F.* to interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows :—
Sworn, &c.

Section 196.
App. B,
Part II,
Form 8.

FORM NO. 22.

Affidavit as to Documents.

Action No. of 19

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and

C.D., Defendant.

I, the above-named defendant *C.D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. The grounds [*here state upon what grounds the objection is made, and verify the facts as far as may be.*]

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. The said last-mentioned documents [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

Sworn, &c.

FORM No. 23.

Section 233.
App. G,
Form 25.

Entry of Special Case.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Set down the dated the day of
, 19 , of Mr. , the
arbitrator in this for hearing as a special case.

Dated the day of , 19 .

(Signed.)

(Address.)

FORM No. 24.

Section 243.
App. B,
Part II,
Form 18.

Notice of Motion.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

To the Registrar of the Supreme Court.

Take notice that the Court will be moved at o'clock
m. on day, the day of , 19 , or so
soon thereafter as counsel can be heard, by Mr.
of counsel for the , that¹

Dated the day of , 19 .

(Signed.) *E.F.*

Solicitor for the

¹ State the
object of the
motion.

FORM No. 25.

Section 259.

Summons Inter Partes.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

To , of

You are hereby summoned to appear before the Honourable
able , at his Chambers at the Supreme Court,

at o'clock m. on day, the day of ,
 1 State the 19 , on the hearing of an application on the part of 1
 object of the application. And you are to take notice that if you do not appear
 the Court may consider and deal with the application in
 a summary way.

Dated the day of , 19 .
 This summons was taken out by , solicitor
 for

Section 259.

FORM No. 26.
 Ex Parte *Summons*.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
 ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
 and
C.D., Defendant.

1 State the Application on the part of for leave to
 object of the Dated the day of , 19 .
 application.

This summons was taken out by , solicitor
 for

Section 261.
App. K,
Form 2.

FORM No. 27.
Order.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
 ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
 and
C.D., Defendant.

1 Mention
the Judge.

1 in Chambers.

Upon the application of , and upon hearing
 , and upon reading the affidavit of
 filed the day of , 19 , It is

2 State the ordered that 2
 nature of the and that the costs of this application be
 order.

Dated the day of , 19 .

Section 387.

FORM No. 28.
*Præcipe for Writ of Execution of Judgment for
 Immovable Property.*

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
 ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
 and
C.D., Defendant.

To the Registrar of the Supreme Court.

Whereas the plaintiff *A.B.* is entitled, under a judgment
 in this action, dated the day of , 19 , to the
 immediate possession of the immovable property mentioned
 in the said judgment and is desirous of enforcing the said
 judgment; I do hereby make application for the issue of
 the proper writ of execution in that behalf, under the
 provisions of Chapter 16 of the Code of Civil Procedure.

Dated the day of , 19 .

(Signed.) *A.B.*, of

[or

E.F.,Solicitor for the plaintiff *A.B.*]

FORM No. 29.

Section 396.

Writ of Execution of Judgment for Immovable Property.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Edward, by the Grace of God, &c.

To the Bailiff of Our said Court, Greeting:

Whereas by a judgment in this action, dated the day of , 19 , the plaintiff *A.B.* is entitled to the immediate possession of the following immovable property now in the occupancy of , of , that is to say¹ :—

¹ Describe the property and its situation.

And whereas the said plaintiff is desirous of enforcing the said judgment, and has applied for the proper writ of execution in that behalf: Now, therefore, We command you that you do forthwith put the said plaintiff in possession of the said immovable property, and We do authorize you to remove any person who may refuse to vacate the same.

Witness the Honourable , Chief Justice of Our said Court, the day of , 19 .

(Signed.)

Registrar.

NOTE.—This writ is to be returned into the Registry immediately after the execution thereof, with a memorandum indorsed thereon of the date and mode of execution.

FORM No. 30.

Section 399.

Writ of Execution of Judgment for Money by Attachment of Property.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Edward, by the Grace of God, &c.

To the Bailiff of Our said Court, Greeting:

Whereas the defendant *C.D.* has failed to satisfy a judgment for money given against him in this action on the day of , 19 , in favour of the plaintiff *A.B.* for the sum of \$, together with interest thereon at the rate of \$ per centum per annum from the date of the said judgment, and also for taxed costs to the amount of \$; and whereas the said plaintiff is desirous of enforcing the said judgment by the attachment of the said defendant's property, and has applied for the proper writ of execution in that behalf: Now, therefore, We command you that you do forthwith attach all the property, movable and immovable, of the said defendant within the Colony, or such part thereof as may be sufficient to satisfy the said judgment and the expenses of the execution thereof, by actual seizure, or by the service of prohibitory orders, according to the nature of the said property; and We further command you that, as to so much of the said property attached under this writ by actual seizure as shall consist of money or negotiable instruments, you do pay and deposit the same respectively into Court, and that, as to such part thereof attached as aforesaid as shall not consist of money or negotiable instruments, you do keep the same in your custody until the further order of the Court or until the sale thereof in satisfaction of the said judgment; and We further command you that, in case you shall not be able to find sufficient property of the said defendant, or the said defendant shall fail to point out to you any property whereon to levy, you do forthwith arrest the said defendant and deliver him into the custody of the Superintendent of Victoria Gaol to be imprisoned therein as a prisoner for debt for the period of unless he shall be sooner discharged from the said imprisonment in due course of law.

And the Court has fixed subsistence allowance at the rate of twenty-five cents a day.

Witness the Honourable _____, Chief Justice
of Our said Court, the _____ day of _____, 19 ____
(Signed.)

Registrar.

NOTE.—This writ is to be returned into the Registry immediately after the execution thereof, with a memorandum indorsed thereon of the date and mode of execution.

Section 400.

FORM NO. 31.

*Prohibitory Order for Attachment of Movable Property
in Execution.*

Action No. _____ of 19 ____

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

To _____, of _____

Whereas the defendant *C.D.* has failed to satisfy a judgment for money given against him in this action on the day of _____, 19 ____, in favour of the plaintiff *A.B.* for the sum of \$ _____, together with interest thereon at the rate of \$ _____ per centum per annum from the date of the said judgment, and also for taxed costs to the amount of \$ _____; and whereas a writ of execution has been issued to enforce the said judgment by the attachment of the said defendant's property: It is ordered that the said defendant be and he is hereby prohibited and restrained, until the further order of this Court, from receiving from *E.F.*, of _____, the following property in the possession of the said *E.F.*, that is to say¹:— _____ to which the said defendant is entitled, subject to any claim, lien, or right of the said *E.F.*; and it is also ordered that the said *E.F.* be and he is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to the said defendant or to any other person or persons whomsoever.

¹ Describe the property.

Witness the Honourable _____, Chief Justice
of Our said Court, the _____ day of _____, 19 ____
(Signed.)

Registrar.

NOTE.—This order is issued under section 400 of the Code of Civil Procedure, and any person who wilfully disobeys it is liable to be committed to prison by the Court.

NOTE.—This order is to be returned into the Registry immediately after the execution thereof, with a memorandum indorsed thereon of the date and mode of execution.

Section 401.

FORM NO. 32.

*Prohibitory Order for Attachment of Immovable
Property in Execution.*

Action No. _____ of 19 ____

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

To the Defendant *C.D.*

Whereas you have failed to satisfy a judgment for money given against you in this Court on the _____ day of _____, 19 ____, in favour of the plaintiff *A.B.* for the sum of \$ _____, together with interest thereon at the rate of \$ _____ per centum per annum from the date of the said judgment, and also for the taxed costs to the amount of \$ _____; and whereas a writ of execution has been issued to enforce the said judgment by the attachment of your property; and whereas it is alleged that certain lands, houses, or other

immovable property belong to you : It is ordered that you be and you are hereby prohibited and restrained, until the further order of this Court, from alienating such lands, houses, or other immovable property and particularly from alienating¹ by sale, gift, or in any other way whatsoever ; and it is also ordered that all persons be and they are hereby prohibited and restrained, until the further order of this Court, from acquiring or receiving any such property by purchase, gift, or in any other way.

¹ Describe the particular immovable property and its situation.

Witness the Honourable _____, Chief Justice
of Our said Court, the _____ day of _____, 19____
(Signed.)

Registrar.

NOTE.—This order is issued under section 401 of the Code of Civil Procedure, and any person who wilfully disobeys it is liable to be committed to prison by the Court.

NOTE.—This order is to be returned into the Registry immediately after the execution thereof, with a memorandum indorsed thereon of the date and mode of execution.

FORM No. 33.

Affidavit in Support of Garnishee Order.

Section 412.
App. B,
Part II,
Form 25.

Action No. _____ of 19____

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant,

I, _____, of _____, the plaintiff
in this action [*or* solicitor for the plaintiff in this action,]
make oath and say as follows :—

1. By a judgment of the Court given in this action, and dated the _____ day of _____, 19____, it was adjudged that I [*or* the said plaintiff] should recover against the defendant *C.D.* the sum of \$ _____, together with interest thereon at the rate of \$ _____ per centum per annum from the date of the said judgment, and costs to be taxed, and the said costs were, by the Registrar's certificate dated the _____ day of _____, 19____, allowed at \$ _____.

2. The said judgment still remains unsatisfied to the extent of \$ _____, and interest amounting to \$ _____.

3. _____ of _____ is indebted to the said defendant _____ in the sum of \$ _____ or thereabouts.

¹ Insert name, address, and description of garnishee.

4. The said _____ is within the jurisdiction of this Court.

Sworn, &c.

FORM No. 34.

Garnishee Order attaching Debt.

Section 412.
App. K,
Form 39.

Action No. _____ of 19____

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Judgment Creditor,
and
C.D., Judgment Debtor.
E.F., Garnishee.

¹ in Chambers.

¹ Mention the Judge.

Upon hearing _____ and upon reading the affidavit of _____, filed the _____ day of _____, 19____, and _____

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the _____ day of _____, 19____, for the sum of \$ _____ on which judgment the said sum of \$ _____ remains due and unpaid :

And it is further ordered that the said garnishee attend the Honourable in Chambers on day, the day of , 19 , at o'clock in the noon, on an application by the said judgment creditor that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be

Dated the day of , 19 .

Section 415.
App. K,
Form 40.

FORM No. 35.

Garnishee Order Absolute.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Judgment Creditor,

and

C.D., Judgment Debtor.

E.F., Garnishee.

¹ in Chambers.

¹ Mention
the Judge.

Upon hearing , and upon reading the affidavit of , filed the day of , 19 , and the order nisi made herein on the day of , 19 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the day of , 19 , for the sum of \$, on which judgment the said sum of \$ remained due and unpaid, it is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment, and that in default thereof execution may issue for the same; and that the costs of this application be

Dated the day of , 19 .

Section 443.

FORM No. 36.

Order for Judgment Creditor to appear on Hearing of Application by Prisoner for Debt to be discharged.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

¹ in Chambers.

¹ Mention
the Judge.

Upon the application of the defendant, and upon hearing the solicitor for the defendant, and upon reading the affidavit of the defendant, It is ordered that the plaintiff be furnished with a copy of the defendant's application for his discharge and of his affidavit filed in support of the same; and it is further ordered that the plaintiff do appear before this Honourable Court in Chambers at o'clock m. on day, the day of , 19 , on the hearing of an application by the defendant to be discharged from prison.

Dated the day of , 19 .

FORM No. 37.

Section 443.

Order for Discharge of Prisoner for Debt from Prison.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.Between *A.B.*, Plaintiff,
and
C.D., Defendant.*To the Superintendent of Victoria Gaol.*

You are hereby authorized to discharge out of your custody the above-named defendant so far as regards the execution in this cause.

Dated the day of , 19 .

By Order of the Court,

(Signed.)

Registrar.

FORM No. 38.

Section 453.

Writ of Foreign Attachment.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.Between *A.B.*, Plaintiff,
and
C.D., Defendant
E.F., Garnishee.

Edward, by the Grace of God, &c.

*To the Bailiff of Our said Court, Greeting :*We command you forthwith to attach all the property, movable and immovable, of the defendant *C.D.* which shall be found within the Colony, and to return this writ into Our said Court on the day of , 19 .Witness the Honourable , Chief Justice
of Our said Court, the day of , 19 .*Indorsements to be made on the Writ.*I hereby certify that this writ reached my hands for execution at o'clock m. on day, the day
of , 19 .

(Signed.)

*Bailiff.*This writ was served on *E.F.*, of , garnishee,
at o'clock m. on day, the day of ,
19 .

(Signed.)

*Bailiff.*A memorial of this writ was registered in the Land
Office at o'clock m. on day, the day of
 , 19 .

(Signed.)

FORM No. 39.

Section 455.

Bond in Case of Foreign Attachment.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.Between *A.B.*, Plaintiff,
and
C.D., Defendant.Know all men by these presents that we, *A.B.*, of ,
and *E.F.*, of , are held and firmly bound unto *C.D.*,
of , in the penal sum of dollars, to be paid to
the said *C.D.* or his executors, administrators, or assigns ;

for which payment to be made we jointly and severally bind ourselves, and each and every of us, and our and every of our respective heirs, executors, and administrators firmly by these presents. In witness whereof we have hereto set our hands and seals this day of , in the Year of Our Lord Nineteen Hundred and .

Whereas an action has lately been instituted in the Supreme Court of Hongkong by the above-bounden *A.B.* as plaintiff against the said *C.D.* as defendant; and whereas, under the provisions of Chapter 17 of the Code of Civil Procedure, a writ of foreign attachment has been issued [*or is about to issue*] in the said action, on the application of the plaintiff, against all the property, movable and immovable, of the defendant within the Colony: Now the condition of this obligation is that, if the defendant shall, at any time within the period limited by the said provisions of the Code of Civil Procedure in that behalf, cause the said writ or any other writ of foreign attachment issued in the said action on the application of the plaintiff to be set aside, or any judgment which may be given in the said action to be reversed or varied, and if the plaintiff, his executors or administrators, shall thereupon forthwith pay or cause to be paid to the defendant, or his executors, administrators, or assigns, all such sums of money, damages, costs, and charges as the said Court may order and award on account of or in relation to the said action and the said writ of foreign attachment, or either of them, then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered (Signed.)
in the presence of

A.B. [L.S.]
E.F. [L.S.]

Section 526
App. B,
Part II,
Form 26.

FORM No. 40.

Affidavit on Interpleader.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

I, *C.D.*, of , the defendant in this action make oath and say as follows:—

1. The writ of summons herein was issued on the day of , 19 , and was served on me on the day of , 19 .

2. The action is brought to recover .
The said ¹ in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed ² by one , who ³

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may direct.

¹ "is" or "are."
² If the claim is in writing, make the writing an exhibit.
³ State expectation of suit, or that he has already sued.

Sworn, &c.

FORM No. 41.

Section 567. *Order for Issue of Warrant for Arrest of Absconding Defendant.*

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Upon the application of the plaintiff *A.B.*, and upon hearing the solicitor for the said plaintiff, and upon reading the affidavit of filed the day of , 19 . It is ordered that a warrant do issue to the Bailiff enjoining him to bring the defendant *C.D.* before the Court in order that he may show cause why he should not give security for his appearance to answer any judgment that may be given against him in this action; and it is further ordered that the

Bailiff be authorized to release the said defendant upon payment by the said defendant to him of the sum of \$ being the amount of the plaintiff's claim herein, together with the sum of \$ for the costs of this action, and such sum as may be due to him for the execution of the warrant; and it is further ordered that, in default of such payment, the Bailiff shall detain the said defendant until the further order of the Court.

Dated the day of , 19 .

FORM No. 42.

Section 567.

Warrant for Arrest of Absconding Defendant.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant,

Edward, by the Grace of God, &c.

To the Bailiff of Our said Court, Greeting :

We command you forthwith to arrest the defendant *C.D.*, pursuant to an order made by Our said Court, and to bring him before Our said Court at o'clock m., on day, the day of , 19 , in order that he may show cause why he should not give security for his appearance to answer any judgment that may be given against him in this action; and We authorize you to release the said defendant upon payment by him to you of the sum of \$, being the amount of the plaintiff's claim herein, together with the sum of \$ for the costs of this action, and such sum as may be due to you for the execution hereof; and We further command you that, in default of such payment, you detain the said defendant until the further order of Our said Court.

Witness the Honourable , Chief Justice
of Our said Court, the day of , 19 .

(Signed.)

Registrar.

NOTE.—This warrant is to be returned into the Registry immediately after the execution thereof, with a memorandum indorsed thereon of the date and mode of execution.

FORM No. 43.

Section 568.

Order for Giving of Bail by Absconding Defendant.

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,
ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Upon the application of the plaintiff *A.B.*, and upon hearing the solicitor for the said plaintiff, and upon reading the affidavit of , of , It is ordered that the defendant *C.D.* do give bail in the sum of \$, to the satisfaction of the Registrar, for his appearance at any time when called upon while this action is pending and until the execution of any judgment that may be given against him in this action; and it is further ordered that, in default of his so doing, the said defendant be committed to prison until the decision of this action, or, if judgment is given against him, until the execution of the judgment, or until the further order of the Court.

Dated the day of , 19 .

Section 568.

FORM NO. 44.

Bail-Bond of Absconding Defendant.

Know all men by these presents that we, *C.D.*, of
E.F., of , and *G.H.*, of , are held
 and firmly bound unto *A.B.*, of , in the sum of
 dollars, to be paid to the said *A.B.* or his
 executors, administrators, or assigns; for which payment
 to be made we jointly and severally bind ourselves, and each
 and every of us, and our and every of our respective heirs,
 executors, and administrators, firmly by these presents. In
 witness whereof we have hereto set our hands and seals this
 day of , in the Year of Our Lord Nineteen
 Hundred and . Now the condition of this obligation is
 that if the above-bounden *C.D.* shall appear in person before
 the Supreme Court of Hongkong, at any time when called
 upon while the action of the said *A.B.* against the said *C.D.*
 in the Original Jurisdiction of the said Court, being Action
 No. of 19 , is pending and until the execution of any
 judgment that may be given against the said *C.D.* in the
 said action, or that if, in default of such appearance, the said
C.D. shall pay any sum of money that may be adjudged
 against him in the said action, with costs, then this obli-
 gation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered (Signed.)
 in the presence of

C.D. [L.S.]*E.F.* [L.S.]*G.H.* [L.S.]

Section 573.

FORM NO. 45.

*Warrant for Bailiff to call upon Defendant to give
Security to produce Property.*

Action No. of 19 .

IN THE SUPREME COURT OF HONGKONG,

ORIGINAL JURISDICTION.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Edward, by the Grace of God, &c.

To the Bailiff of Our said Court, Greeting:

We command you forthwith to call upon the defendant
C.D. either by day, the day of , 19 ,
 to furnish security in the sum of \$ to produce and
 place at the disposal of Our said Court, when required, his
 property or the value of the same, or such portion thereof
 as may be sufficient to answer any judgment that may be
 made against him in this action, or by the said day to appear
 before Our said Court and show cause why he should not furn-
 ish such security; and We further command you, in default
 of such security being given, to attach all the movable and
 immovable property of the said defendant within the Colony
 until the further order of Our said Court.

Witness the Honourable , Chief Justice
 of Our said Court, the day of , 19 .

(Signed.)

Registrar.

NOTE.—This warrant is to be returned into the Registry
 immediately after the execution thereof, with a memorandum
 indorsed thereon of the date and mode of execution.

No. 6 OF 1901.

An Ordinance to repeal various Statutes relating to Civil Procedure or Matters connected therewith.

HENRY A. BLAKE,
Governor.

[12th March, 1901.]

WHEREAS it is expedient that various statutes (mentioned in the Schedule to this Ordinance) which relate to civil procedure or matters connected therewith, and which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by the Legislature, or have, by lapse of time and change of circumstances, become unnecessary, or the subject-matter whereof is provided for by the Code of Civil Procedure, should be expressly and specifically repealed;

And whereas the process of outlawry in civil proceedings has become obsolete, and it is expedient that it should be formally abolished, and that the statutes relating thereto should be repealed:

Be it therefore enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Civil Procedure (Statutes Repeal) Ordinance, 1901. Short title.
2. The statutes and resolution described in the Schedule to this Ordinance are hereby repealed, subject to the provisions of this Ordinance and subject to the exceptions mentioned in the Schedule. Repeal of statutes, etc. Schedule.
3. After the commencement of this Ordinance no person shall be outlawed or waived in or in consequence of any civil proceeding, and no proceedings to outlawry or waiver in or in consequence of any civil proceeding shall be taken at the instance of the Crown or otherwise. Abolition of outlawry in civil proceedings. 42 & 43 Vict. c. 59 s. 3.
4. All statutes in force in this Colony relating to outlawry or waiver in or in consequence of any civil proceeding are hereby repealed. Repeal of statutes relating to outlawry. *Ib.* s. 2.
5. The repeal effected by this Ordinance shall not affect—
 - (1.) any jurisdiction or principle or rule of law or of equity established or confirmed, or duty imposed, or compensation secured, or any remedy or proceeding in respect thereof, by or under any statute repealed by this Ordinance; or
 - (2.) any jurisdiction or power of the Supreme Court or of any Judge thereof; or
 - (3.) the repeal, confirmation, revival, or perpetuation by any statute repealed by this Ordinance of any statute not repealed by this Ordinance. Savings as to repeal of statutes. *Ib.* s. 4 (1.)
6. This Ordinance shall not revive or restore any jurisdiction, office, duty, drawback, fee, payment, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not now existing or in force. Abolished procedure, etc., not revived. *Ib.* s. 4 (4.)
7. This Ordinance shall come into force on the 1st day of July, 1901. Commencement of the Ordinance.

Passed the Legislative Council of Hongkong, this 14th day of February, 1901.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 12th day of March, 1901.

J. H. STEWART LOCKHART,
Colonial Secretary.

SCHEDULE.

Section 2.

TABLE OF STATUTES REPEALED.

Number and Year.	Title, Date, and Extent of Repeal.
Ordinance No. 6 of 1855.	An Ordinance for the Amendment of the Civil Administration of Justice. [25th August, 1855.]
Ordinance No. 5 of 1856.	An Ordinance for the Amendment of Procedure in Civil and Criminal Cases. [17th March, 1856.]
Ordinance No. 7 of 1856.	An Ordinance to extend to this Colony certain Enactments and General Orders for reforming Procedure in the High Court of Chancery and the Offices thereof. [17th March, 1856.] In part; namely, the whole Ordinance, except in so far as it extends to the Colony the Lunacy Regulation Act, 1853.
Ordinance No. 4 of 1857.	An Ordinance for amending the Ordinances therein mentioned. [5th March, 1857.]
Ordinance No. 3 of 1858.	An Ordinance for the Supreme Court. [22nd March, 1858.]
Ordinance No. 7 of 1860.	An Ordinance to extend to this Colony certain Rules and Orders of the Superior Courts at Westminster. [30th April, 1860.]
Ordinance No. 3 of 1861.	An Ordinance to amend the Course of Procedure in the Supreme Court of Hongkong in its Equity Jurisdiction, and to enable it to award Damages in certain Cases. [25th June, 1861.]
Ordinance No. 13 of 1873.	The Hongkong Code of Civil Procedure. [13th October, 1873.]
Ordinance No. 8 of 1890.	An Ordinance to amend the Hongkong Code of Civil Procedure. [23rd May, 1890.]
Ordinance No. 5 of 1893.	An Ordinance to amend the Hongkong Code of Civil Procedure. [17th February, 1893.]
Resolution of 1897.	Resolution of the Legislative Council amending section 13 (2.) of the Hongkong Code of Civil Procedure. [13th November, 1897.]

No. 7 OF 1901.

An Ordinance to consolidate and amend the Laws relating to Trustees.

LS

HENRY A. BLAKE,
Governor.

[12th March, 1901.]

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

1. This Ordinance may be cited as the Trustee Ordinance, Short title. 1901.

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

Interpreta-
tion of terms,
56 & 57 *Vict.*
c. 53 s. 50.

“Contingent Right,” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

“Convey” and “Conveyance” applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women in accordance with the provisions of the Married Women’s Disposition of Property Ordinance, 1885:

No. 12 of
1885.

“Devisee” includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description:

“Instrument” includes Act of Parliament and Ordinance:

“Land” includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land:

“Mortgage” and “Mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee:

“Pay” and “Payment,” as applied in relation to stocks and securities, and in connexion with the expression “into Court,” include the deposit or transfer of the same in or into Court:

“Possessed” applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in, any land:

“Property” includes movable and immovable property, and any estate and interest in any property, movable or immovable, and any debt, and any thing in action, and any other right or interest, whether in possession or not:

“Rights” includes estates and interests:

"Securities" includes stocks, funds, and shares; and, so far as relates to payments into Court, includes Imperial Government securities, and any security of any foreign state, any British possession, or any body corporate or company, or standing in books kept by any body corporate, company, or person in the United Kingdom or in this Colony, and all stocks, funds, and effects:

"Stock" includes fully paid up shares; and, so far as relates to vesting orders made by the Court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein:

"The Court" means the Supreme Court:

"Transfer", in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee:

"Trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception "trust" and "trustee" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person.

PART I.

THE OFFICIAL TRUSTEE.

Appointment of Official Trustee. *Ord. No. 7 of 1873 s. 3.* **3.**—(1.) For the purpose of carrying into effect the provisions of this Part, it shall be lawful for the Governor from time to time to appoint a fit and proper person to be Official Trustee under this Ordinance.

(2.) The said office shall have perpetual succession, and all lands or any interests therein, and all moneys, stocks, and securities and land which may be vested in the Official Trustee under this Part shall be deemed to be vested in the Official Trustee for the time being, without any further transfer or conveyance.

Payment of trust moneys into bank to credit of Official Trustee. *Ib. s. 4 and 56 & 57 Vict. c. 53 s. 42.* **4.** Trustees, or the majority of trustees, having in their hands or under their control any moneys belonging to any trust, shall be at liberty, on filing in the Registry of the Court an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the privity of the Official Trustee and in accordance with such directions as they may receive for the purpose from him into the Court; and the said trust moneys shall be paid through the Treasury into the bank of the Government on deposit bearing interest, or otherwise, to the account of the Official Trustee (by his official designation) in the matter of the particular trust (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the Court.

Transfer of trust securities into name of Official Trustee. *Ord. No. 7 of 1873 s. 4.* **5.** Trustees, or the majority of trustees, having any securities standing in their names in the books of any public company or corporation established in the Colony, or in the names of any deceased persons of whom they are personal representatives, upon any trust, shall be at liberty, on filing such affidavit as aforesaid, to transfer such securities, with such privity and in accordance with such directions as aforesaid, into the name of the Official Trustee (by his official designation) or to deposit the same in his name in such bank as aforesaid in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the Court.

Conveyance of land in trust to Official Trustee. *Ib.* **6.** Trustees, or the majority of trustees, in whom any land within the Colony is or becomes vested upon any trust shall be at liberty, on filing such affidavit as aforesaid, to convey such land, with such privity and in accordance with such directions as aforesaid, to the Official Trustee, in trust to attend the orders of the Court.

Certificate to be given by Official Trustee. *Ib.* **7.** In every such case as aforesaid the certificate of the Official Trustee for the moneys so paid, or of the transfer or deposit of such securities, or of the conveyance of such land shall be a sufficient discharge to such trustees or other persons for the moneys so paid, or the stocks or securities so transferred or deposited, or the land so conveyed as aforesaid.

8.—(1.) Where any moneys or securities, or any land, are or is vested in any persons as trustees, and the majority of them are desirous of paying, transferring, depositing, or conveying the same as aforesaid, but the concurrence of the other or others cannot be obtained, the Court may order the payment, transfer, deposit, or conveyance to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker, or other depository, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court.

Order for payment, etc., by majority of trustees without concurrence of others. 56 & 57 Vict. c. 53 s. 42.

(2.) Every payment, transfer, deposit, delivery, and conveyance made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys, securities, or the land, so paid, transferred, deposited, delivered, or conveyed.

9.—(1.) Such orders as may seem fit shall from time to time be made by the Court in respect of the trust estate and for the investment and payment of any such moneys, or of any dividends or interest on any such securities, and for the transfer and delivery out of any such securities, and for the administration of any such trust generally, upon a petition to be presented in a summary way to the Court by such party or parties as to the Court may appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court may see fit and direct.

Administration of trust estate. Ord. No. 7 of 1873 s. 5.

(2.) Every order made upon any such petition shall have the same authority and effect, and shall be enforced in the same manner, as if the same had been made in an action regularly instituted in the Court.

(3.) If in any case it appears that the trust estate cannot be safely administered without the institution of one or more action or actions, the Court may direct any such action or actions to be instituted.

10.—(1.) There shall be imposed and levied for the use of the Crown upon every trust estate administered under this Part a charge equivalent to the following percentage on the net value of the trust estate, that is to say, two per cent. where the value of the trust estate does not exceed ten thousand dollars, and where the value exceeds ten thousand dollars two per cent. on the first ten thousand dollars and one per cent. on the excess.

Charges upon trust estate administered by Official Trustee. Ib. s. 6.

(2.) The said charge shall constitute a primary lien upon the trust estate, and shall be levied in the case of trust moneys deposited in a bank by an order of the Court, authorizing the payment thereof to the Official Trustee for the use of the Crown, and in the case of securities or land by sale, mortgage, or otherwise as the Court may direct, and in case of any such sale or mortgage, the Court may, by the same or any further order, empower the Official Trustee to execute all instruments necessary for carrying out this provision, and instruments so executed shall be as valid and effectual to all intents and purposes as if the same had been executed by all persons who, but for this provision, would have been necessary parties thereto.

(3.) There shall also be imposed and levied for the use of the Crown upon every such estate a charge equivalent to two per cent. on the annual revenue of the trust estate. The Official Trustee shall deduct such charge in making up the annual accounts of the estate, and pay the same into the Treasury.

Ord. No. 5 of 1885.

11. In the administration of any trust estate the Official Trustee shall have and may exercise all the rights and powers conferred upon trustees by this Ordinance, so far as they are applicable to such trust estate.

General rights and powers of Official Trustee. New.

12. The Official Trustee shall incur no personal liability by reason of any securities being transferred into his name as aforesaid, or by reason of any land being conveyed to him as aforesaid, or by reason of any loss accruing to any trust estate in his hands, otherwise than by his own wilful neglect or default: Provided that nothing in this Part shall be deemed to affect any rights or remedies against the trust estate or against any *cestui que trust* or any person other than the Official Trustee and the trustee so discharged as aforesaid.

Limitation of liability of Official Trustee. Ord. No. 7 of 1873 s. 8.

13. The rules contained in the First Schedule to this Ordinance shall be observed in proceedings under the pro-

Rules for summary

administration of trust funds. *Ord. No. 7 of 1873 s. 9.* First Schedule.

visions of this Part relating to the summary administration of trust funds, subject to the repeal or variation thereof under the powers for the time being vested in the Court in relation to the making of general rules and orders.

PART II.

INVESTMENTS.

- Authorized investments. 14. A trustee may, unless expressly forbidden by the instrument, if any, creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say,—
- 56 & 57 *Vict.* c. 53 s. 1, and 63 & 64 *Vict.* c. 62 s. 2.
- (1.) in any of the parliamentary stocks or public funds or Government securities of the United Kingdom ;
 - (2.) on real or heritable securities in Great Britain or Ireland or in this Colony ;
 - (3.) in the stock of the Bank of England or the Bank of Ireland ;
 - (4.) in India three and a half per cent. stock and India three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament and charged on the revenues of India ;
 - (5.) in any securities the interest of which is for the time being guaranteed by Parliament ;
 - (6.) in consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District ;
 - (7.) in the debenture or rentcharge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having, during each of the ten years last past before the date of investment, paid a dividend at the rate of not less than three per cent. per annum on its ordinary stock ;
 - (8.) in the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (7.), either alone or jointly with any other railway company ;
 - (9.) in the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India ;
 - (10.) in the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde, Punjab, and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorized by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway ; also in deferred annuities comprised in the register of holders of annuity Class D. and annuities comprised in the register of annuitants Class C. of the East Indian Railway Company ;
 - (11.) in the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed ;
 - (12.) in the debenture or guaranteed or preference stock of any company in Great Britain or Ireland established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having, during each of the ten years last past before the date of investment, paid a dividend of not less than five pounds per cent. on its ordinary stock ;
 - (13.) in nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough in the United Kingdom having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council in the United Kingdom, under the authority of any Act of Parliament or Provisional Order ;

- (14.) in nominal or inscribed stock issued, or to be issued, by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that, during each of the ten years last past before the date of investment, the rates levied by such commissioners have not exceeded eighty per cent. of the amount authorized by law to be levied;
- (15.) In any Colonial Stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 to 1900, and with respect to which all conditions prescribed by the Imperial Treasury, by order notified in the London Gazette, have been observed;
- (16.) in any of the securities for the time being authorized for the investment of cash under the control or subject to the order of the High Court of Justice in England; and
- (17.) in any securities authorized by the Court on summary application for that purpose made in Chambers, and may also from time to time vary any such investment.

15.—(1.) A trustee may, under the powers of this Ordinance, invest in any of the securities mentioned or referred to in the last preceding section, notwithstanding that the same may be redeemable and that the price exceeds the redemption value.

Purchase at premium of redeemable stock.
56 & 57 *Vict.*
c. 53 s. 2.

(2.) Provided that a trustee may not, under the powers of this Ordinance, purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-sections (7.), (9.), (11.), (12.), (13.) and (15.) of the last preceding section which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per cent. above par or such other fixed rate.

(3.) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Ordinance.

16. Every power conferred by the preceding sections of this Part shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Discretion of trustees.
Ib. s. 3.

17. The preceding sections of this Part shall apply as well to trusts created before as to trusts created after the commencement of this Ordinance, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.

Application of preceding sections of Part II.
Ib. s. 4.

18.—(1.) A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest, and shall be deemed to have always had power to invest,—

Enlargement of express powers of investment.
Ib. s. 5.

(a.) on mortgage of property in the United Kingdom held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption, or to any condition for re-entry, except for non-payment of rent;

(b.) on mortgage of property in this Colony held under Crown lease for an unexpired term of not less than fifty years; and

(c.) on any charge, or on mortgage of any charge, made under the Improvement of Land Act, 1864.

(2.) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorizing the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

(3.) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may, unless the contrary is expressed in the instrument authorizing the investment, invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875.

(4.) A trustee having power to invest money in securities in the Isle of Man, or in securities of the Government of a British Colony, may, unless the contrary is expressed in the instrument authorizing the investment, invest in any securities of the Government of the Isle of Man, under the Isle of Man Loans Act, 1880.

(5.) A trustee having a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament or Ordinance may invest in, or upon the security of, mortgage debentures duly issued under and in accordance with the provisions of the Mortgage Debenture Act, 1865.

Power to invest, notwithstanding drainage charges.
56 & 57 Vict. c. 53 s. 6.

19. A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

Trustees not to convert inscribed stock into certificates to bearer.
Ib. s. 7.

20.—(1.) A trustee, unless authorized by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, that is to say,—

- (a.) the India Stock Certificate Act, 1863;
- (b.) the National Debt Act, 1870;
- (c.) the Local Loans Act, 1875; and
- (d.) the Colonial Stock Act, 1877.

(2.) Nothing in this section shall impose on the Bank of England or the Bank of Ireland, or on any person authorized to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, or invalidate any such certificate if granted.

Loans and investments by trustees not chargeable as breaches of trust.
Ib. s. 8.

21.—(1.) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that, in making the loan, the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2.) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that, in making the loan, he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3.) A trustee shall not be chargeable with breach of trust only upon the ground that, in effecting the purchase of or in lending money upon the security of any property, he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if, in the opinion of the Court, the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Ordinance.

Liability for loss by reason of improper investment.
Ib. s. 9 and 57 & 58 Vict. c. 10 s. 4.

22.—(1.) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof, with interest.

(2.) A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument creating the trust or by the general law.

(3.) This section applies to investments made as well before as after the commencement of this Ordinance.

PART III.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

Appointment of New Trustees.

23.—(1.) Where a trustee, either original or substituted and whether appointed by a Court or otherwise, is dead, or remains out of the Colony for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or, if there is no such person or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the Colony, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

Power of appointing new trustees. 56 & 57 Vict. c. 53 s. 10.

(2.) On the appointment of a new trustee for the whole or any part of trust property—

- (a.) the number of trustees may be increased; and
- (b.) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and
- (c.) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and
- (d.) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(3.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(4.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(6.) This section applies to trusts created either before or after the commencement of this Ordinance.

24.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees, and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the

Retirement of trustee. 17. s. 11.

vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Ordinance, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Ordinance.

Vesting of trust property in new or continuing trustees.
56 & 57 Vict. c. 53 s. 12.

25.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Ordinance contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under any Act of Parliament or Ordinance.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Ordinance.

(5.) This section applies only to deeds executed after the commencement of this Ordinance.

Purchase and Sale.

Power of trustee for sale to sell by public auction, etc.
Ib. s. 13.

26.—(1.) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Ordinance.

Power to sell subject to depreciatory conditions.
Ib. s. 14.

27.—(1.) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2.) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3.) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4.) This section applies only to sales made after the commencement of this Ordinance.

28. When any land is vested in a married woman as a bare trustee she may convey or surrender it as if she were a feme sole.

Case of married woman bare trustee. 56 & 57 Vict. c. 53 s. 16.

Various Powers and Liabilities.

29.—(1.) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of and to produce a deed having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed or the indorsed receipt being signed by the trustee; and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment. The producing of any such deed by the solicitor shall have the same validity and effect as if the person appointing the solicitor had not been a trustee.

Power to authorize receipt of money by solicitor or banker. *Ib.* s. 17.

(2.) A trustee may appoint a banker or solicitor to be his agent to receive or give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee; and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3.) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Ordinance had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the solicitor or banker for a period longer than is reasonably necessary to enable the solicitor or banker, as the case may be, to pay or transfer the same to the trustee.

(4.) This section applies only where the money or valuable consideration or property is received after the commencement of this Ordinance.

(5.) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

30.—(1.) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

Insurance of building and payment of premiums. *Ib.* s. 18.

(2.) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3.) This section applies to trusts created either before or after the commencement of this Ordinance, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

31.—(1.) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as may be requisite: Provided that where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not

Power of trustee of renewable leaseholds to renew and raise money for the purpose. *Ib.* s. 19.

apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2.) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease, or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted or that no more is raised than is wanted for the purpose.

(3.) This section applies to trusts created either before or after the commencement of this Ordinance, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power under settlement to sell or exchange land.
Ord. No. 7 of 1873 s. 14.

32. In all cases where by any will, deed, or other instrument of settlement it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any land named or referred to in or from time to time subject to the trusts of such will, deed, or other instrument, it shall be lawful for such trustees or other persons, whether the land is vested in them or not, to exercise the power of sale by selling the land either together or in lots, and either by public auction or by private contract, and either at one time or several times, and (in case the power expressly authorizes an exchange) to exchange any land which for the time being may be subject to the trusts aforesaid for any other land in the Colony, as the case may be, and upon such exchange to give or receive any money for equality of exchange.

Power to make special stipulations on sale or exchange.
Ib. s. 15.

33. It shall be lawful for the persons making any such sale or exchange to insert any such special or other stipulations, either as to title or evidence of title or otherwise, in any conditions of sale, or contract for sale or exchange, as they may think fit, and also to buy in the land or any part thereof at any sale by public auction, and to rescind or vary any contract for sale or exchange, and to resell the land which is so bought in or as to which the contract is so rescinded, without being responsible for any loss which may be occasioned thereby, and no purchaser under any such sale shall be bound to inquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase money in the purchase of any other land or otherwise.

Power to convey on sale or exchange.
Ib. s. 16.

34. For the purpose of completing any such sale or exchange as aforesaid, the persons empowered to sell or exchange as aforesaid shall have full power to convey or otherwise dispose of the land in question, as may be necessary.

Power of trustee to give receipts.
56 & 57 Vict. c. 53 s. 20.

35.—(1.) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Ordinance.

Power for executor or trustee to compound debt, etc.
Ib. s. 21.

36.—(1.) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, movable or immovable, for any debt or for any property, movable or immovable, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such

agreements, instruments of composition or arrangement, releases, and other things as to him or them may seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships, administratorships, and trusts constituted or created either before or after the commencement of this Ordinance.

37.—(1.) Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, has satisfied all such liabilities under the lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part, as the case may be, of the personal estate of the deceased to meet any future liability under the lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the lease or agreement for a lease.

Liability of executor in respect of rents, etc., in lease.
Ord. No. 7 of 1873 s. 12.

(2.) Nothing in this section shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

38.—(1.) Where any property is held by trustees in trust for an infant, either for life or for any greater interest and whether absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

Application by trustees of income of property of infant for maintenance, etc.
44 & 45 Vict. c. 41 s. 43.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are, by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Ordinance.

39.—(1.) A trustee making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died, or become lunatic, of unsound mind, or bankrupt, or had revoked the power, by the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not, at the time of the payment or act, known to the trustee.

Validity of payment by trustee under power of attorney without notice of death, etc.
Ib. s. 47 and 56 & 57 Vict. c. 53 s. 23.

(2.) This section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the trustee if the payment had not been made by him.

Powers of two or more trustees.
56 & 57 Vict. c. 53 s. 22.

40.—(1.) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to trusts constituted after or created by instruments coming into operation after the commencement of this Ordinance.

Implied indemnity of trustee.
Ib. s. 24.

41. A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers.

PART IV.

POWERS OF THE COURT.

Appointment of New Trustees and Vesting Orders.

Power of the Court to appoint new trustees.
Ib. s. 25.

42.—(1.) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable to do so without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the preceding provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony or is a bankrupt.

(2.) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3.) Nothing in this section shall give power to appoint an executor or administrator.

Vesting order as to land.
Ib. s. 26.

43. In any of the following cases, namely,—

- (1.) where the Court appoints or has appointed a new trustee; and
- (2.) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person,—
 - (a.) is an infant; or
 - (b.) is out of the jurisdiction of the Court; or
 - (c.) cannot be found; and
- (3.) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and
- (4.) where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead; and
- (5.) where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and
- (6.) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement,

the Court may make an order (in this Ordinance called a "vesting order") vesting the land in any such person in

any such manner and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that—

- (a.) where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate as the Court may direct in the persons who, on the appointment, are the trustees; and
- (b.) where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

44. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Order as to contingent right of unborn person. 56 & 57 Vict. c. 53 s. 27.

45. Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is an infant, the Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee.

Vesting order in place of conveyance by infant mortgagee. *Ib.* s. 28.

46. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land, then the Court may make an order vesting the land in such person or persons in such manner and for such estate as the Court may direct in any of the following cases, namely,—

Vesting order in place of conveyance by heir, or devisee of heir, etc., or personal representative of mortgagee. *Ib.* s. 29.

- (1.) where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the Court or cannot be found;
- (2.) where an heir or personal representative or devisee of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land, has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled;
- (3.) where it is uncertain which of several devisees of the mortgagee was the survivor;
- (4.) where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; and
- (5.) where there is no heir or personal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee.

47. Where the Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Ordinance, and the Court may, if it thinks fit, make an order vesting the land or any part thereof for such estate as the Court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgment for sale or mortgage of land. *Ib.* s. 30.

48. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the Court may declare that any of the parties to the action are trustees of the land

Vesting order consequential on judgment for specific performance, etc. *Ib.* s. 31.

or any part thereof within the meaning of this Ordinance, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Ordinance, and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order.
56 & 57 Vict.
c. 53 s. 32.

49. A vesting order under any of the preceding provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate as the Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey.
Ib. s. 33.

50. In all cases where a vesting order can be made under any of the preceding provisions, the Court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Vesting order as to stock and chose in action.
Ib. s. 35.

51.—(1.) In any of the following cases, namely,—

- (a.) where the Court appoints or has appointed a new trustee; and
- (b.) where a trustee entitled alone or jointly with another person to stock or to a chose in action—
 - (i.) is an infant; or
 - (ii.) is out of the jurisdiction of the Court; or
 - (iii.) cannot be found; or
 - (iv.) refuses or neglects to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled; or
 - (v.) refuses or neglects to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the Court for that purpose has been served on him; or
- (c.) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is living or dead,

the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court may appoint:

Provided that—

- (a.) where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
- (b.) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person, either alone or jointly with any other person whom the Court may appoint.

(2.) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3.) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Ordinance may transfer the stock to himself or any other person, according to the order, and all banks and companies shall obey every order under this section according to its tenor.

(4.) After notice in writing of an order under this section it shall not be lawful for any bank or company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5.) The Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Ordinance is to be exercised.

(6.) The provisions of this Ordinance as to vesting orders shall apply to shares in ships registered under the Acts or Ordinances relating to merchant shipping as if they were stock.

52.—(1.) An order under this Ordinance for the appointment of a new trustee, or concerning any land, stock, or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

Persons entitled to apply for order. 56 & 57 Viet. c. 53 s. 36.

(2.) An order under this Ordinance concerning any land, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

53. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Powers of new trustee appointed by the Court. *Ib.* s. 37.

54. The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to charge costs of order, etc., on trust estate. *Ib.* s. 38.

55. The powers conferred by this Ordinance as to vesting orders may be exercised by this Ordinance as to vesting orders in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Trustees of charities. *Ib.* s. 39.

56. Where a vesting order is made as to any land under this Ordinance, or under any Ordinance relating to lunacy, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the Court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance or the payment of costs occasioned by any such order, if improperly obtained.

Order made upon certain allegations to be conclusive evidence. *Ib.* s. 40.

Giving Judgment in Absence of Trustee, etc.

57. Where in any action the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to give judgment in absence of trustee. *Ib.* s. 43.

Power to
sanction sale
of land or
minerals
separately.
56 & 57 *Vict.*
c. 53 s. 44
and 57 & 58
Vict. c. 10
s. 3.

58.—(1.) Where a trustee or other person is for the time being authorized to dispose of land by way of sale, exchange, or partition, the Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

(2.) Any such trustee or other person with the said sanction previously obtained, may, unless forbidden by the instrument creating the trust or direction, from time to time, without any further application to the Court, so dispose of any such land or minerals.

(3.) Nothing in this section shall derogate from any power which a trustee may have under any other Ordinance.

Power to
make benefi-
ciary indem-
nify trustee
for breach of
trust.
56 & 57 *Vict.*
c. 53 s. 45.

59.—(1.) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court may seem just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2.) This section shall apply to breaches of trust committed as well before as after the commencement of this Ordinance, but shall not apply so as to prejudice any question in an action or other proceeding which is pending at the commencement of this Ordinance.

PART V.

MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS.

Trust estate
not affected
by trustee
becoming a
convict.
Ib. s. 48.

60. Property vested in any person on any trust or by way of mortgage shall, in case of that person being convicted of treason or felony, remain in the trustee or mortgagee, or survive to his co-trustee, or descend to his representative as if he had not been so convicted: Provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Power for
trustee, etc.,
to apply to
the Court for
advice as to
management
of trust
property.
Ord. No. 7 of
1873 s. 10.

61.—(1.) Any trustee, executor, or administrator shall be at liberty, without the institution of an action, to apply by petition to the Court, or upon a written statement by summons in Chambers, for the opinion, advice, or direction of the Court on any question respecting the management or administration of the trust property or the assets of any testator or intestate.

(2.) The petition or statement shall be signed by counsel, and the Court may require the petitioner or applicant to attend by counsel either in Court or in Chambers, where the Court deems it necessary to have the assistance of counsel.

(3.) The application shall be served on or the hearing thereof shall be attended by all persons interested in such application, or such of them as the Court may think expedient.

(4.) The trustee, executor, or administrator acting upon the opinion, advice, or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the application: Provided, nevertheless, that this section shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction, if such trustee, executor, or administrator has been guilty of any fraud, or wilful concealment, or misrepresentation in obtaining such opinion, advice, or direction.

Jurisdiction
of the Court
to give relief
in case of
breach of
trust.
59 & 60 *Vict.*
c. 35 s. 3.

62. If it appears to the Court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee, either wholly or partly, from personal liability for the same.

63.—(1.) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof, still retained by the trustee or previously received by the trustee and converted to his use, the following provisions shall apply:—

Right of trustee to plead statute of limitations. 51 & 52 Vict. c. 59 ss. 1, 8.

(a.) all rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him; and

(b.) if the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

(2.) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

(3.) For the purposes of this section the expression "trustee" shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, but not the Official Trustee.

(4.) The provisions of this section shall apply as well to several joint trustees as to a sole trustee.

(5.) This section shall apply only to actions or other proceedings commenced on or after the 1st day of January, 1902, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations.

64. This Ordinance, and every order purporting to be made under this Ordinance, shall be a complete indemnity to any bank and to all persons for any acts done pursuant thereto; and it shall not be necessary for any bank or person to inquire concerning the propriety of the order or whether the Court had jurisdiction to make the same.

Indemnity 56 & 57 Vict. c. 53 s. 49.

65. For the purposes of this Ordinance, the present Official Trustee shall be deemed to have been duly appointed thereunder.

Present Official Trustee.

66. The Ordinances mentioned in the Second Schedule to this Ordinance are hereby repealed.

Repeal of Ordinances. Second Schedule. Commencement of the Ordinance.

67. This Ordinance shall come into force on the 1st day of July, 1901.

Passed the Legislative Council of Hongkong, this 25th day of February, 1901.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 12th day of March, 1901.

J. H. STEWART LOCKHART,
Colonial Secretary.

SCHEDULES.

Section 13.

THE FIRST SCHEDULE.

RULES RELATING TO THE SUMMARY ADMINISTRATION OF TRUST FUNDS.

Affidavit to be filed by trustee desiring to pay money to account of, or to deposit shares, etc., in name of, Official Trustee.

1. Any trustee desiring to pay money to the account of, or to transfer or deposit shares, stock, or securities into or in the name of, the Official Trustee under the provisions of the Trustee Ordinance, 1901, relating to the summary administration of trust funds, shall file an affidavit, setting forth:—

- (1.) his own name and address;
- (2.) the place where he is to be served with any petition or any notice of any proceeding or order of the Court, or of the Judge in Chambers, relating to the trust fund;
- (3.) the amount of money, shares, stock, or securities, which he proposes to pay or transfer into or deposit in Court to the credit of the trust;
- (4.) a short description of the trust and of the instrument creating it;
- (5.) the names of the persons interested in or entitled to the fund, to the best of the knowledge and belief of the trustee; and
- (6.) the submission of the trustee to answer all such inquiries relating to the application of the money, shares, stock, or securities paid in, transferred, or deposited under the Ordinance as the Court or a Judge in Chambers may think proper to make or direct.

Directions for payment of money, etc.

2. The Official Trustee, on production of an office copy of the affidavit, shall give the necessary directions for payment, transfer, or deposit, and place the money, shares, stock, or securities, to the account of the particular trust; and shall grant a certificate of such payment, transfer, or deposit.

Investment of moneys.

3. Where it is deemed unnecessary to have the money or the dividends or interest of the shares, stock, or securities invested in the meantime, the affidavit shall further contain a statement to that effect. But where the affidavit contains no such statement, the Official Trustee shall be at liberty to invest, as soon as conveniently may be, the money paid in or the dividends or interest on the shares, stock, or securities transferred, and all accumulations thereof, in or upon such investments and securities as the Court may direct or approve, and every such investment shall be made in the matter of the particular trust: Provided that where at any time a request in writing, by or on behalf of any party claiming to be entitled, that such investment may be discontinued is left with the Official Trustee, he shall be at liberty to cease making any further investment in the matter of the particular trust until the Court has made some order in that behalf.

Notice of payment, etc., to *cestuis que trustent*.

4. The trustee, having made the payment, transfer, or deposit, shall forthwith give notice thereof to the several persons named in his affidavit as interested in or entitled to the fund.

Applications relating to fund.

5. Such persons, or any of them, or the trustee, may apply by petition, or, in cases where the fund does not exceed two thousand dollars in value, by summons, respecting the investment, payment out, or distribution of the fund or of the dividends or interest thereof.

Notice to trustee of application by *cestui que trust*.

6. The trustee shall be served with notice of any application made to the Court or in Chambers respecting the fund, or the dividends or interest thereof, by any person interested therein or entitled thereto.

Notice to *cestuis que trustent* of application by trustee.

7. The persons interested in or entitled to the fund shall be served with notice of any application made by the trustee to the Court or in Chambers respecting the fund or the interest or dividends thereof.

Place for service on applicant.

8. No petition shall be set down to be heard, and no summons shall be sealed, until the petitioner or applicant has first named in his petition or summons a place where he may be served with any petition or summons or notice of any proceeding or order of the Court relating to the fund.

Title of petition, etc.

9. Every petition presented, summons issued, and affidavit filed under the said provisions shall be entitled in the matter of the Ordinance and in the matter of the particular trust.

Section 66.

THE SECOND SCHEDULE.

TABLE OF ORDINANCES REPEALED.

Number and Year.	Title and Date.
Ordinance No. 7 of 1873.	An Ordinance to extend to this Colony some of the provisions of certain Acts of the Imperial Parliament for the Relief of Trustees and Executors. [9th July, 1873.]
Ordinance No. 5 of 1885.	An Ordinance to amend Ordinance 7 of 1873. [21st February, 1885.]

No. 8 OF 1901.

An Ordinance to consolidate and amend the laws relating to Rating.

LS

HENRY A. BLAKE,
Governor.

[12th March, 1901.]

WHEREAS it is expedient to consolidate and amend the laws relating to Rating:

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Rating Ordinance, 1901. Short title.2. In this Ordinance, unless the context otherwise requires, Definitions and explanations.

The expression "Annual Valuation" means a general valuation of the rateable tenements in the whole Colony, or any part thereof, to be made yearly under this Ordinance:

The expression "Hill District" means any part of the island of Hongkong above the 600 feet contour, except Chinese villages:

The expression "Interim Valuation" means a valuation made at any time of any tenement, which may have been increased or reduced in value since the last valuation thereof, whether by building, destruction of building or other alteration in the structural condition of such tenement, or which being rateable is not already rated:

The expression "List" means the Annual Valuation List provided for by this Ordinance:

The expression "Machinery" means machinery used for purely industrial or manufacturing purposes, but shall not include lifts and machinery used as adjuncts to any tenements occupied as offices, dwellings, or hotels. In making, however, any valuation of such lifts and machinery the Assessor shall deduct the expenses of working such lifts and machinery from the rateable value thereof if such expenses are paid by the landlord:

The expression "Owner" means the holder of any tenement direct from the Crown, whether under lease, license, or otherwise; or the immediate landlord of any tenement, or the agent of any such holder or landlord who is absent or under disability:

The expression "Pier" includes "Wharf":

The expression "Rateable Value" means the rent at which any tenement might reasonably be expected to let, at the time of the valuation, from year to year, if the tenant undertook to pay all usual tenants' rates and taxes, and if the landlord undertook to pay the Crown Rent and the costs of repairs and insurance, with any other expenses necessary to maintain the tenement in a state to command that rent. Such rateable value shall not include the value of any machinery upon or in the tenement. In the case of buildings let to more than one occupier, there may be deducted from the total annual rent of the whole tenement, estimated as aforesaid, a sum not exceeding 20 per cent. of the

whole as an allowance for such portions of such buildings as may reasonably be expected to be unlet from time to time during the ensuing year, and the remainder shall be the Rateable Value.

The expression "Tenement" means any land with or without buildings, which is held or occupied as a distinct or separate holding or tenancy, or any wharf or pier in the waters of the Colony except such as are exempted by section 17 of the Piers Ordinance, 1899:

The expression "Unoccupied" when applied to a tenement, means while such tenement is put to no beneficial use, and when applied to a building means while such building is neither used for storage of any goods or chattels nor for habitation, except by a caretaker:

The expression "Victoria" means the City of Victoria, of which the following shall be the boundaries:—

NORTH.—The Harbour.

SOUTH.—A contour of the hill-side six hundred feet above the level of the sea.

EAST.—A straight line from the centre of the nullah crossing the Shaukiwan Road at the south-west corner of Causeway Bay to Wong-nai Chung public school-house, produced southward until it meets the southern boundary.

WEST.—Mount Davis:

The expression "Year" means the period from July 1st in any calendar year to June 30th next following, or any other period of twelve months fixed by the Governor in Council.

The Assessor.

Appointment of Assessor. &c. 3. The Governor in Council may, from time to time, appoint an Assessor and such Assistant Assessors as he may deem necessary for the purposes of this Ordinance, and may allow them such remuneration as he thinks fit.

Powers of Assessor.

4. The Assessor may—

- (1.) Serve the owner or occupier of any tenement with Form A (1) or Form A (2), in the first schedule hereto, as the case may be, and require him to furnish, within ten days, the particulars therein specified.
- (2.) From time to time enter into and upon any tenement for the purpose of making a valuation thereof, and take such measurements and other particulars as he may deem necessary for the purposes of such valuation.
- (3.) Call upon such owner or occupier to exhibit to him all receipts for rent, rent-books, accounts, or other documents whatever connected with the rent or value of such tenement.
- (4.) Serve on such owner or occupier a written notice as in Form B in the first schedule hereto, requiring permission to enter; and, after twenty-four hours from the delivery of such notice, may, at any time during the daytime, enter into and upon the said tenement, and take measurements and other particulars, as hereinbefore provided, and may use force to effect such entry if necessary, doing no more damage than is necessary for the purpose.

Mode of valuation.

5. The Assessor shall separately estimate the rateable value of each tenement, except in the following cases:—

- (1.) Whenever the value of a tenement is affected by the value of another tenement, contiguous to it, or separated only by a road-way, and both tenements are owned by the same person, the two tenements may be valued together.
- (2.) When two or more tenements are so built that their floors overlap or are intermixed, they may be valued as one tenement, the rates being charged against any one of the owners, who may be required to adjust their respective shares of payment of such rates amongst themselves.

Return of Annual Value.

6. Any owner of a tenement occupied by himself, for which no rent passes, or any owner of more than ten tenements may, within ten days from the service upon him of Form A (1) or Form A (2), as provided by section 4, apply in writing to the Assessor for an extension of the time allowed for returning such form, stating his reasons for the application, and the Assessor may grant such extension of time, not exceeding twenty-eight days additional, as to him may appear reasonable.

Return of annual value, owner may ask for time.

Annual Valuations.

7. The Assessor shall make in each year, before the 30th of April, or as soon thereafter as may be, a valuation of the tenements in the Colony, or of such part thereof as the Governor in Council may direct.

General annual valuation.

8. The Governor in Council may—

(1.) Fix any other day as the day before which (or as soon thereafter as may be) the valuation shall be finished.

Powers of Governor in Council.

(2.) Adopt any valuation at any time existing, either wholly or in part, as the valuation for the ensuing year or any part thereof; and shall cause notice of such adoption, and of the extent thereof, to be published in the Gazette. Any existing valuation so adopted shall, for the purposes of appeal, be considered a new valuation.

9. As soon as the said valuation is completed, the Assessor shall make out a list of the several tenements assessed, and of their respective valuations, and shall deliver the same to the Colonial Secretary.

List of valuations.

10. The Assessor shall make and subscribe, in the presence of the Colonial Secretary, a declaration to the effect that the list contains a true account of all valuations made by him, and that the same is, to the best of his knowledge and belief, complete and correct in every respect. After which, the Colonial Secretary shall deliver the list to the Treasurer.

Verification of list.

11. After the list has been so declared and delivered, no alteration shall be made in it except as provided by sections 23 and 25, or to correct merely clerical errors. Such errors shall be declared by the Assessor before a Justice of the Peace in the form of Form E in the first schedule hereto, which shall be submitted to the Governor, who may, in his discretion, approve such corrections or any of them, and without whose written sanction no such correction shall be made.

Corrections of errors.

12. When any tenement is valued for the first time, or when any existing valuation is altered, the Assessor shall, within fourteen days after the completion of the valuation, serve notice in writing upon the owner, or upon the occupier if the owner or his agent cannot be found, of such valuation having been made and of the amount thereof. Such notice may be given in the form of Form C in the first schedule hereto: Provided that this section shall not apply to valuations of tenements in Chinese villages.

Notice of valuation.

13. The omission to serve such notice shall not invalidate any valuation nor relieve any person from the payment of rates.

Omission to serve notice.

14. The list, or an examined copy thereof, shall be open to inspection at the Treasury during office hours for twenty-one days, of which notice shall be previously given in the Gazette and at least one English and one Chinese public newspaper, and any owner or occupier of any tenement included in such list may, during such twenty-one days, take any extract therefrom.

List to be open for inspection.

15. The Colonial Secretary, on receipt of the list of Chinese tenements for each country district, shall cause a copy thereof to be made in Chinese (stating only the number of each house, its valuation and the annual rates) and to be exhibited in a conspicuous place in the principal village of each district during the twenty-one days above mentioned.

Country districts.

Annual Valuations.—Appeal.

16. Any person aggrieved on any of the following grounds—

Appeal.

(1.) That any tenement for which he is rateable is valued beyond its rateable value;

(2.) That any tenement is assessed which is not rateable;

(3.) That any person who, or any tenement which, ought to be inserted in the list is omitted therefrom;

(4.) That any tenement is valued therein below its rateable value;

may, during the twenty-one days during which the list is open for inspection, lodge with the Registrar of the Supreme Court a notice of appeal to the Court in its Summary Jurisdiction. If an existing valuation has been adopted under sub-section 2 of section 8, such period of twenty-one days shall be reckoned from the date of the Gazette in which notice of such adoption shall be published. The Assessor shall be the respondent in any appeal under this section or section 23.

Notice of appeal.

17. Such notice of appeal shall state fully the grounds on which the appeal is made, and the appellant shall, also within the period of twenty-one days before mentioned, cause a copy thereof to be served on the Assessor.

Appeal relative to the property of others.

18. When the appeal is in relation to any tenement not the property or in the occupation of the appellant, the appellant shall, within the same limit of time, cause a copy of such notice of appeal to be served on the person interested in the result of the appeal, and such person may be heard upon the appeal.

Prosecution of appeal.

19. The appellant shall prosecute his appeal within one month from the expiry of the aforesaid period of twenty-one days, failing which, his right to appeal shall lapse.

Notice of hearing.

20. On the fixing by the Court of a day for hearing such appeal, the appellant shall forthwith give notice thereof to the Assessor.

Appeal to be disallowed in certain cases.

21. Such appeal shall not be entertained by the Court if it shall be shown, to the satisfaction of the Judge—

(1.) That any of the provisions of sections 16 to 20 inclusive have not been complied with by the appellant.

(2.) That the appellant or his agent knowingly furnished false or incorrect particulars to the Assessor on Form A (1) or Form A (2) for the purposes of the valuation against which the appeal is made.

(3.) That the appellant neglected or refused to supply the information required by section 4 within ten days of demand.

But disallowance may, in certain cases, be avoided.

22. In any case in which an appeal might be disallowed under sub-section 3 of section 21, the Judge may, nevertheless, hear the appeal, if it shall appear—

(1.) That the omission to give the required information arose from the absence or disability of the appellant, or other unavoidable cause.

(2.) That application was made to the Assessor under section 6 for an extension of time, and was refused without good cause, or that the time allowed was not, in the opinion of the Court, of reasonable length.

Hearing appeal.

23. The Court, upon proof that the notices required by sections 16 to 20 inclusive were given within the time fixed by those sections, shall hear and determine the matter of the appeal in a summary way, and may make such order therein as it thinks proper, with or without costs to any party; and may direct the Treasurer to amend the list in any manner. Such order of the Court shall be final and conclusive.

Interim Valuations.

Interim valuations.

24. The Assessor may at any time make an interim valuation of any tenement.

Entry of valuation.

25. The Assessor shall notify the Treasurer of the amount of such valuation, and the Treasurer shall cause the same to be inserted in the list.

Notice of valuation.

26. The Assessor shall, without delay, serve upon the owner of such tenement, or upon the occupier if the owner cannot be found, notice in the form of Form C of such valuation having been made, and of the amount thereof. No rates shall be recoverable in respect of such tenement until such notice has been served.

27. The rates assessed shall be payable from the first day of the month next following the assessment, and shall thereafter continue to be payable quarterly.

Interim Valuations.—Appeal.

28. Any person aggrieved by any interim valuation, on the ground that the tenement assessed is not rateable under this Ordinance, or that it is valued beyond its rateable value, may appeal to the Supreme Court in its summary jurisdiction, whereupon sections 16 to 23 inclusive shall apply in relation to such appeal. The period of twenty-one days mentioned in those sections shall be taken to be twenty-one days from the service on the owner or occupier of the tenement of notice as in Form C under this Ordinance, or in case such notice was not received by such owner or occupier, twenty-one days from the first demand upon him to pay the rates to which the appeal refers.

Interim valuation appeal.

Rating.

29. After the time for appealing has expired the following percentages on the valuation of every tenement enumerated in the list shall be payable as rates from the first day of July in each year or from such other day as may from time to time be fixed by the Governor in Council, viz., for any tenement:—

Rates fixed.

- In the City of Victoria,13 per cent.
- In that portion of the Hill District bounded on the North, South and West by the 600-foot contour, and on the East by a line drawn North and South passing through the Wanchai Gap; and in such other portion of the Hill District as may be hereafter, by order of the Governor, notified in the Gazette,10 $\frac{3}{4}$ per cent.
- In the remaining portion of the Hill District,8 $\frac{3}{4}$ per cent.
- In Yaumati, Kowloon Point, Hunghom and Hunghom West Nos. 1 to 26,12 $\frac{1}{4}$ per cent.
- In Hunghom West Nos. 27 to 53,8 $\frac{3}{4}$ per cent.
- In Mong Kok Tsui,10 $\frac{1}{2}$ per cent.
- In Causeway Bay, Kau Kau Ok, Po Kau Wat, San Tsun (otherwise Tai Hang), Shaukiwan, Shaukiwan West, Whitfield (including North Point), Soo Kon Po, Tsing Shui Ma Tau, Tung Lo Wan, Wong Nai Chung, Kwat Chuen Lung, Sai Wan Ho, Shaukiwan Road, Wongkok Tsui, Aberdeen and Hok Un, 9 per cent.
- In any other place, 7 per cent.

Out of the rates levied in the City of Victoria and out of the rates levied in any other district or place where water is supplied by the Water Authority under the provisions of the Waterworks Ordinance, 1890, an amount not exceeding two per cent. of the valuation for the time being on the tenements in such city, district, or place may, in the discretion of the Governor, be carried to the credit of the "Water Account" mentioned in section 16 of Ordinance No. 16 of 1890.

30. On the valuation of piers not exempted by section 17 of the Piers Ordinance, 1899, wherever such piers may be situate, a total charge of seven per cent. shall be payable. When such piers are within the City of Victoria, and are valued in conjunction with adjoining tenements under section 5, the Assessor shall make a suitable deduction, not exceeding forty-five per cent., from the full rateable value of each pier, which may then be assessed as if it formed part of the adjoining tenement.

Rates on piers.

31. The rates provided for in sections 29 and 30 and the districts to which they apply may, from time to time, be altered by resolution of the Legislative Council. If such resolution should be carried, the Governor shall fix a date for its coming into effect.

Alteration of rates.

32. The above rates shall be paid quarterly in advance at the Treasury within the first month of each quarter, and the times appointed for such payment shall be notified quarterly by the Treasurer in the Gazette.

Rates how paid.

Payment and Recovery of Rates.

Rates to be
an occupier's
tax.

33. The owners and occupiers of all tenements shall be liable to the Crown for payment of the rates assessed thereon, but the same shall be deemed an occupier's rate, and, as between the owner and occupier of any tenement, shall, in the absence of any agreement to the contrary, be borne by the occupier; and the amount thereof, if paid by the owner, may be recovered by him from the occupier in an action for money paid to his use, or, if he is still in occupation of the tenement, by distress in the same manner as for rent, and the provisions of this section shall equally apply to the recovery of rates paid by one owner on account of another under sub-section 2 of section 5.

Recovery
of rates.

34. If any person fail to pay any rates for which he is liable, within one month after the day notified in the Gazette as the last day for payment, the Treasurer may recover the same by suit in the summary jurisdiction of the Supreme Court, together with interest at the rate of eight per cent. per annum from the day when such rates ought to have been paid until the day of payment.

Refund of Rates.

Refund of
rates.

35. Refund of rates may be made subject to the following rule:—

Whenever any tenement is unoccupied during one or more entire months of any quarter in respect of which the rates upon such tenement were paid in advance within the first month of such quarter, the Treasurer shall, subject to the provisions of section 36, refund the rates for such months:

Provided that no refund of rates shall be made in respect of the non-occupation of any portion less than the whole of any land or building which may have been assessed as a separate tenement.

Mode of
obtaining
refund.

36. Refunds may be obtained in the following manner:—

(1.) The owner of any tenement may give notice to the Treasurer that such tenement is vacant not later than the fifteenth day of any month from the first day of which it is intended to claim such refund.

(2.) So long as such tenement shall remain continuously unoccupied, no further notice shall be required, but after the re-occupation of such tenement, notice of any subsequent vacancy shall again be required, as provided in the preceding subsection.

(3.) The person claiming the refund may, within fifteen days after the expiration of the quarter during which the tenement has been unoccupied, apply to the Treasurer in the Form D in the first schedule hereto, for such refund.

(4.) The Treasurer may refund the rates for one or more entire months during such quarter if due notice have been given, and if the Treasurer be satisfied that the tenement was unoccupied during such months, which he shall ascertain by causing it to be actually inspected from month to month.

Court may
entertain
petition
exceeding
\$1,000.

37. Any person aggrieved by refusal on the part of the Treasurer to refund rates may apply to the Supreme Court in its summary jurisdiction, and the Court may adjudicate upon a petition for a refund of rates, although the claim exceeds one thousand dollars, and for the purpose of such adjudication may receive any evidence it thinks fit.

Want of
notice.

38. The petitioner shall not recover if the notice required by section 36 of this Ordinance has not been given, the burden of proof whereof shall rest upon him.

Exemptions.

Exemptions.

39.—(1.) Tenements below the rateable value of such minimum amount as may be fixed by the Governor in Council from time to time and notified in the Gazette, shall not be rateable.

(2.) The following tenements, so long as they are not occupied in any way for gain or pecuniary profit, shall not be rateable:—

Almshouses.
 Art Schools or Art Galleries.
 Cemeteries.
 Charitable dispensaries.
 Free Libraries.
 Government premises, whether Imperial or Colonial.
 Hospitals.
 Museums.
 Places of Worship.
 Rifle ranges.
 Schools.
 The City Hall.

40. Except as provided by section 39, no exemption from rates shall be allowed. No other exemptions allowed.

House Numbering.

41. Every owner or occupier of any tenement shall allow such tenement to be numbered with such number and in such manner as the Assessor shall from time to time direct. House numbers.

42. The owner or occupier of such tenement shall allow the maintenance or alteration of such number to the satisfaction of the Assessor, and shall not alter, conceal, remove, deface, or obliterate it. Maintenance of numbers.

Penalties.

43. The penalties hereinafter mentioned for offences against this Ordinance shall be recoverable in a summary way before a Magistrate at any time within two years from the commission of the offence. Penalties.

(1.) Any owner or occupier of a tenement who refuses or neglects to furnish the particulars required under section 4 shall be liable to a penalty not exceeding one hundred dollars.

(2.) Any person who shall knowingly furnish any false or incorrect particulars specified in Form A (1) or Form A (2) in the first schedule to this Ordinance shall be liable to a penalty not exceeding one hundred dollars for each tenement in respect of which such false or incorrect particulars are furnished.

(3.) Every owner or occupier of any tenement refusing to exhibit when required to the Assessor any receipt for rent, or any book or other document relevant to the valuation, shall be liable to a penalty not exceeding one hundred dollars.

(4.) Any person who shall prevent, hinder, or obstruct the Assessor from entering, inspecting, and measuring any tenement, after delivery of due notice of his intention to do so, and after the lapse of twenty-four hours from such notice, shall be liable to a penalty not exceeding one hundred dollars.

(5.) Any person who shall prevent, hinder, or obstruct the numbering or the maintenance or alteration of the number of any tenement, shall be liable to a penalty not exceeding twenty-five dollars.

(6.) Any person who shall conceal, remove, deface, or obliterate the number of any tenement, shall be liable to a penalty not exceeding ten dollars; and also, in cases where such concealment or obliteration arises from the act of the owner or occupier of such tenement, shall be liable to a penalty of one dollar for each day during which it is continued.

(7.) Any person who gives any notice required by section 36 of this Ordinance, which is knowingly false or incorrect shall be liable to a penalty not exceeding one hundred dollars.

Miscellaneous.

44. Any notice required by this Ordinance to be served upon the owner or occupier of any tenement shall be served on the owner of such tenement if he can be found, or if not, on the occupier. Service on the occupier may be effected by leaving such notice at the tenement, or by sending it to such tenement through the Post. Service on the owner may be effected by leaving such notice at his usual address, or by sending it to such address through the Post. Service of notices.

- Proof of service.** 45. A receipt for any notice signed or stamped by any officer of the Post Office shall be *prima facie* evidence of the service of such notice at its address, except for the purposes of section 26.
- Misnomers, etc., not to affect the execution of this Ordinance.** 46. No misnomer or inaccurate description of any person, place, or tenement, in any document required for the purposes of this Ordinance, nor any mistake, informality, or omission committed in any proceeding had hereunder, shall invalidate or prejudice to common intent and understanding, or in any wise affect the execution of this Ordinance: provided that such person, place, or tenement be designated in such document or proceeding to common intent and understanding, and that such mistake, informality, or omission be not of such a nature as to prevent the requirements of this Ordinance from being substantially complied with.
- Judges may act in certain cases relating to rates.** 47. No Judge shall be incapable of acting in his judicial office in any proceeding, whether commenced before or after the passing of this Ordinance, by reason of his being, as one of several rate-payers, or as one of any other class of persons, liable in common with others to contribute to or to be benefitted by any rate which may be increased, diminished, or in any way affected by such proceeding.
- Regulations.** 48. The Governor in Council may, from time to time, make, alter, and repeal regulations for the better carrying out of the provisions of this Ordinance. All such regulations shall be published in the Gazette, and when so published shall have the force of law.
- Explanation of reference in section 16 of Ordinance No. 16 of 1890, to section 28 of Ordinance No. 15 of 1888.** 49. The reference to section 28 of Ordinance No. 15 of 1888, in section 16 of the Waterworks Ordinance, 1890, shall be deemed to be a reference to section 29 of this Ordinance, and if section 29 shall hereafter be amended, or the rates provided thereby be altered by resolution of the Legislative Council, the said reference shall be deemed to be a reference to such section as amended or altered from time to time.
- Repeal. Proviso.** 50. The Ordinances mentioned in the second Schedule hereto, are hereby repealed; Provided that such repeal shall not invalidate any valuation or any appointment made under any Ordinance so repealed, and any such valuation or appointment shall henceforth be deemed to have been made under this Ordinance.
51. This Ordinance shall come into force on the 1st day of April, 1901.

Passed the Legislative Council of Hongkong, this 25th day of February, 1901.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 12th day of March, 1901.

J. H. STEWART LOCKHART,
Colonial Secretary.

FIRST SCHEDULE.

Form A (1) [Section 4 (1.)]
FOR BUILDINGS, &C.
FOR THE ASSESSMENT OF THE YEAR 19
July 1st to June 30th.

To In pursuance of the Rating Ordinance, 1901, I require you to furnish me with the particulars relating to these Tenements in the manner specified below, and return the same to me at _____
Hongkong, 19 _____
ASSESSOR.

RETURN OF HOUSES, BUILDINGS, AND LANDS IN HONGKONG OF WHICH THE UNDERSIGNED IS OWNER OR OCCUPIER.

1	2	3	4	5	6	7	8	9	10	11
No. of Assessment.	Street.	Lot.	Owner's distinguishing No. or Name of Tenement.	Description of Tenement. 1. Whether Dwelling House with Out-house and Garden etc. 2. Warehouse or other building, etc., separately occupied.	If Godowns State Capacity.	Name and Calling of whether Owner or Lessee.	If the Tenement is sub-divided into Sub-Tenements and Rent paid by each.	Total Rent for the current month for the whole Tenement, including rates, and if any portion of the Tenement is unoccupied.	If the Tenement is sub-divided into Sub-Tenements, do you consider you lose from portions of the Tenement being at times void.	If the whole Tenement is let or leased, the Period of Tenure, when entered upon, and whether the premises are kept in repair by the Owner or by the Lessee at his own cost.

Note.—Any person who knowingly furnishes false or incorrect particulars is liable to a fine of one hundred dollars for each tenement in respect of which such false or incorrect particulars are furnished. If the above information is not furnished within ten days, no appeal from the Assessment will be allowed.

Signature of Owner or Occupier.

Form A (2) [Section 4 (1.)]
FOR PIERS.

PARTICULARS AS TO THE PIER OPPOSITE MARINE LOT No. _____, OWNED BY _____

[Reply here.]

1. State the length, breadth, and superficial area of the pier
2. How much of the length or breadth is available for the berthing of vessels?
3. How many steamers or other vessels made use of the pier for the twelve months ending
4. What was the average toll charged for each?...'
5. Is the wharf used for packing merchandise? ...
6. What is the Crown Rent?
7. What is the state of repair?
8. What do you consider a fair annual rental (gross)?
9. Have you allowed for the value of this pier in making a return of the value of any other tenement; if so, name such tenement and state to what extent such addition to its value was made?

Occupier.

Note.—The term "Pier" includes "Wharf."

Form B. [Section 4 (4.)]

FOR THE ASSESSMENT OF THE YEAR 19 .

To _____ occupier of

I hereby give you notice under the provisions of section (4) of the Rating Ordinance, 1901. that I require permission to enter upon the above tenement for the purpose of inspecting the same, so as to enable me to fix the valuation thereof for the year 19 ; and that I intend to enter upon the said tenement on next between the hours of _____ and _____

Hongkong, the

19 .

*Assessor.***Form C.** (Section 12.)

VALUATION FOR THE YEAR 19 .

(July 1st to June 30th)

UNDER THE RATING ORDINANCE, 1901.

To _____
or occupier or holder of the tenements enumerated below. You are informed that the tenements specified below have been assessed to the rates for the above year at the rateable values separately entered against them.

Date _____

Assessor.

No. of Asst.	Lot.		Street.		Description of Tenement.	Rateable Value.	Remarks.
	Description.	No.	Name.	No.			
						\$	

Form D. [Section 36 (3.)]

THE RATING ORDINANCE, 1901.

Application for Refund of Rates.

Hongkong,

19 .

Sir,

I request that you will refund the rates paid on the tenements and for the periods named below. Notice has already been given you that those tenements were vacant during the periods stated, which do not include any broken month, and the rates in question were paid into the Treasury in advance during the first month of the quarter.

I am, &c.,

Owner or Agent.

To the Treasurer.

No.	Street.	Period for which refund is claimed.	\$	c.

* Received the above amount.

Owner or Agent.

NOTE.—If there are more houses than can be entered on the above form write on the back of this. This application must be made during the first fifteen days after the expiration of the quarter during which the tenements were vacant.

* This receipt must not be signed till the claim has been allowed by the Treasury.

Form E. (Section 11.)

THE RATING ORDINANCE, 1901.

Permission is requested to make the following corrections in the Valuation List for the year 19 . . . I declare that such corrections are of clerical errors only, and that the values as so corrected are, to the best of my knowledge and belief, full and fair valuations of the tenements named below, and are correct in every particular.

Declared before me

Assessor.

Justice of the Peace.

Asst. No.	Tenement.		Existing entry.	Corrected entry.	Reasons for the corrections.
	No.	Street.			

Approved

Governor.

SECOND SCHEDULE.

Table of Enactments Repealed.

Number and Year of Ordinance.	Title of Ordinance.	Extent of Repeal.
No. 15 of 1888.	The Rating Ordinance.	The whole.
No. 17 of 1890.	An Ordinance to amend Ordinance No. 15 of 1888, entitled The Rating Ordinance, 1888.	The whole.
No. 5 of 1892.	An Ordinance to amend Ordinance No. 15 of 1888, entitled "The Rating Ordinance, 1888," and Ordinance No. 16 of 1890, entitled "The Waterworks Ordinance, 1890."	The whole.
No. 33 of 1899.	An Ordinance to amend The Rating Ordinance, 1888.	The whole.

No. 9 OF 1901.

An Ordinance to amend the Law of Libel and Slander.

LS

HENRY A. BLAKE,
Governor.

[12th March, 1901.]

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

Short title.

1. This Ordinance may be cited as the Law of Libel Amendment Ordinance, 1901.

Interpreta-
tion of terms.
No. 5 of 1887.
44 & 45 Vict.
c. 60 s. 1.

2. In this Ordinance and in the Defamation and Libel Ordinance, 1887, unless the context otherwise requires,—

“Newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in the Colony periodically or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements:

“Proprietor” means and includes as well the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Privilege of
newspaper
report of
proceedings
in court.
51 & 52 Vict.
c. 64 s. 3.

3. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

Privilege of
newspaper
report of
proceedings
of public
meeting and
of certain
bodies and
persons.
7b. s. 4.

4.—(1.) A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a body, board, or authority formed or constituted under the provisions of any Ordinance or of any committee appointed by any such body, board, or authority, or of any meeting of any commissioners authorized to act by letters patent, Act of Parliament, Ordinance, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of the Legislative Council, and justices of the peace in licensing sessions assembled, and the publication, at the request of any Government office or department or of the Captain Superintendent of Police, of any notice or report issued by them or him for the information of the public, shall be privileged, unless it is proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter: Provided, also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it is proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: Provided, further, that nothing in this section shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

(2.) For the purposes of this section “public meeting” shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

5.—(1.) It shall be competent for the Supreme Court, on an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel shall also be entitled to be joined in a common action on a joint application being made by such new defendants and the defendants in the actions already consolidated.

Consolidation of actions. 51 & 52 Vict. c. 64 s. 5

(2.) In a consolidated action under this section the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they have so found between and against the said last-mentioned defendants; and similar provisions shall apply if the trial is before a Judge without a jury. The Judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he may deem just for the apportionment of such costs between and against such defendants.

6. At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Power to defendant to give certain evidence in mitigation of damages. *Ib.* s. 6.

7. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other document containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

Obscene matter need not be set forth in indictment or other judicial proceeding. *Ib.* s. 7.

8.—(1.) No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained.

Order of Judge required for prosecution of newspaper proprietor, etc. *Ib.* s. 8.

(2.) Such application shall be made on notice to the accused person, who shall have an opportunity of being heard against such application.

9. Every person charged with the offence of libel before any court of criminal jurisdiction, and the wife or husband of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge.

Competency as witness of person proceeded against criminally. *Ib.* s. 9.

10. Words spoken and published after the commencement of this Ordinance which impute unchastity or adultery to any woman or girl shall not require special damages to render them actionable: Provided that in any action for words spoken and made actionable by this Ordinance, a plaintiff shall not recover more costs than damages, unless the Judge at the trial certifies that there was reasonable ground for bringing the action.

Words imputing unchastity to woman or girl *per se* actionable. 54 & 55 Vict. c. 51 s. 1.

11. Sections 14 and 15 of the Defamation and Libel Ordinance, 1887, are hereby repealed.

Repeal of enactments. No. 5 of 1878.

Passed the Legislative Council of Hongkong, this 25th day of February, 1901.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 12th day of March, 1901.

J. H. STEWART LOCKHART,
Colonial Secretary.