

Civil Procedure Code (Amendment)

Act No 79 of 1988

AN ACT TO AMEND THE CIVIL PROCEDURE CODE

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows;

Gazette Nos,

[656-24-1991](#)

Short title. **1.** This Act may be cited as the Civil Procedure Code (Amendment) Act, No. 79 of 1988 and shall come into operation on such date, as the Minister may by Order published in the Gazette appoint (hereinafter referred to as the "appointed date").

Amendment of section 5 of Chapter 101. **2.** Section 5 of the Civil Procedure Code (hereinafter referred to as the "principal enactment") is hereby amended by the insertion immediately after the definition of the expression " decree " of the following new definition : - " Fiscal " includes a Deputy Fiscal;'.  
Regular

Replacement of section 39 of the principal enactment. **3.** Section 39 of the principal enactment is hereby repealed and the following section substituted therefor :

39. Every action of regular procedure shall be instituted by presenting a duly stamped written plaint to the court, or to such officer as the court shall appoint in that behalf. The plaint shall be accompanied by such number of summonses in Form No, 16 in the First Schedule as there are defendants, and a precept in Form" No. 17 of the said Schedule."

Amendment of section 46 of the principal statement **4.** Section 46 of the principal enactment is hereby amended in the second proviso to subsection (2) thereof, as follows:

(1) in paragraph (j) thereof, by the substitution, for the words " amended within such time," of the words " amended within such time;"; and

(2) by the addition immediately after paragraph (j) thereof, of the following new paragraph:

" (k) when the plaint is not accompanied by such number of summonses as there are defendants, "

Amendment of section 55 of the principal enactment. **5.** Section 55 of the principal enactment is hereby amended by the repeal of subsection (1) thereof, and the substitution therefor, of the following subsection :

" (1) Upon the plaint being filed and the copies of concise statements required by section 49 presented, the court shall order summons in the Form No 16 in the principal enactment. First Schedule to issue, signed by the Registrar of the court, requiring the defendant to answer the plaint on or before a day to be specified in the summons, such day, being a day not later than three months from the date of institution of the action in court. The summons, together with such copy of concise statement, each translated into the language of the defendant where his language is not the language of the court, attached therein, shall be delivered under a precept from the court in the Form No. 17 in the said Schedule, or to the like effect, to the Fiscal of the court or to a Fiscal of a court of like jurisdiction within the

local limits of whose jurisdiction the defendant resides, who shall cause the same to be duly served on the defendant, or on each defendant, if more than one, and shall as hereinafter provided, return the same and the execution thereof to the court, duly verified by the officer to whom the actual service thereof has been entrusted; Provided that, where the Fiscal of the court fails, due to circumstances beyond his control, to serve summons on the defendant as specified above, the court may at its discretion, extend the period fixed for return of summons to another date, not being date later than three months from the date on which he defendant was first required to answer the plaint."

Replacement of section 70 of the principal enactment.

**6.** Section 70 of the principal enactment is hereby repealed and the following section substituted therefor:

Order granting leave for the service of summons out of Sri Lanka shall direct the mode by which such service shall be effected, and also direct that the defendant, shall on or before the date specified in the summons, such date being a date not later than six months from the date of the order for service outside Sri Lanka, file his answer and comply with the other requirements of section 55."

Amendment of section 77 of the principal enactment.

**7.** Section 77 of the principal enactment is hereby amended by the substitution for the words "for amendment within a time to be fixed by the court, imposing such terms as to costs or otherwise as the court thinks fit. of the words " for amendment within a period not exceeding one month from the date on which the answer was so returned, and the court may impose such terms as to costs or otherwise as it thinks fit. "

Replacement of section 80 of the principal enactment.

**8.** Section 80 of the principal enactment is hereby repealed, and the following section substituted therefor :--

**80.** On the date fixed for the filing of the answer of the defendant or where replication is permitted, on the date fixed for the filing of such replication, and whether the same is filed or not, the court shall appoint a date for the trial of the action, and shall give notice thereof, in writing by registered post to all parties who have furnished a registered address and tendered the cost of service of such notice, as provided by subsection (2) of section 55.

Replacement of section 93 of the principal enactment

**9.** Section 93 of the principal enactment is hereby repealed and the following section substituted therefor:

" 93. (1) The court may, in exceptional circumstances and for reasons to be recorded, at any hearing of the action, or at any time in the presence of, or after reasonable notice to all the parties to the action, before final judgment, amend all pleadings and processes in the action by way of addition, or of alteration or of omission.

(2) Every order for amendment made under this section shall be upon such terms as to costs and postponement of the date fixed for the filing of answer, or replication, or for the hearing of the case or otherwise, as the court may think fit.

(3) The amendments or additions made in pursuance of an order under this section shall be clearly written on the pleadings or processes affected by the order; or if it cannot be conveniently so done, a fair draft of the document as altered shall be appended to the document intended to be amended and

every such amendment or alteration shall be initialled by the judge."

Amendment of section 143 of the principal enactment.

**10.** Section 143 of the principal enactment is hereby amended by the repeal of subsection (1) thereof, and the substitution therefor of the following subsection:

" (1) The court may, if sufficient cause be shown at any stage of the action, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the action: Provided however, that no adjournment in excess of Six weeks may be granted except in exceptional circumstances, and for reasons to be recorded."

Amendment of section 183 of the principal enactment.

**11.** Section 183 of the, principal enactment is hereby amended as follows:

(1) in paragraph (b) thereof, by the substitution ten- the words ' (and who shall be styled " Commissioner to administer Oaths") ' of the words ' (and who shall be styled " Commissioner for Oaths ") ; or, and  
(2) by the addition immediately alter paragraph (b) thereof of the following new paragraph;

" (c) any person qualified to administer an Oath or affirmation according to the law of the country, in which the affidavit is sworn or affirmed."

Insertion of new sections 183A and 183B IN the principal enactment,

**12,** The following new sections are hereby inserted immediately alter section 383 of the principal enactment, and shall have effect as sections 183A and 183B of that enactment;

"Who may make affidavits in lieu of the parties to the action

183A. "Where any person is required under the provisions, of this Code, or under any other law for the time being in force, to make an affidavit, then

(a) where the action is brought by or against the Attorney-General, any officer of the State ; and

(b) where the action is brought by or against a corporation, board, public body, or company, any Secretary, director or other principal officer of such corporation, board, public body or company; and

(c) where any party to the action is absent from Sri Lanka, his attorney duly authorized to bring, conduct or defend the action as the case may be ; and

(d) where any party to the action, or where there is more than one party to the action such of the parties as are in Sri Lanka, or when such attorney of the parties as is just above mentioned, is or are unable, for want of personal knowledge or bodily or mental infirmity, to make the required affidavit, any recognized agent of such party, may make an affidavit in respect of these matters, instead of the party to the action:

Provided that in each of the foregoing cases the person who makes the affidavit instead of the party to the action, must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained and shall be liable to be examined as to the subject matter thereof at the discretion of the Judge, as the party to the action would have been, if the affidavit had been made by such party.

Punishment 183B. Where any person wilfully makes any false statement by affidavit

for wilful or otherwise, in the course of any of the proceedings aforesaid he may be  
false punished a\* for a contempt of court, besides his liability to be tried and  
statement punished under the Penal Code for the offence of giving false evidence,  
made under where such statement is on oath or affirmation.  
section  
183A.

Amendment of section 323 of the principal enactment **13.** Section 325 of the principal enactment is hereby amended, in subsection (4) thereof, by the substitution for the words "inquiry has been given to all persons concerned", of the words "inquiry has been given to all persons concerned- Every such investigation and inquiry shall be concluded within sixty days of the publication of the notice referred to in subsection (2).",

Amendment of section 328 of the principal enactment **14.** Section 326 of the principal enactment is hereby amended as follows: (1) in paragraph (b) of subsection (1) thereof, by the substitution for the words " is frivolous or vexatious; or ", of the words " is not in good faith ; or " ; and (2) by the repeal of subsection (2) thereof.

Amendment of section 327 of the principal enactment. **15,** Section 327 of the principal enactment is hereby amended as follows :

(1) by the substitution for the words " resistance or obstruction or ouster," of the words " resistance, obstruction, hindrance or ouster," ; and

(2) by the substitution, for the words, "make order dismissing the petition " of the words "making order dismissing the petition, if it finds that such right or interest has been established ".

Insertion of new section 327A In the principal enactment. **16.** The following new section is hereby inserted immediately after section 327 of the principal enactment, and shall have effect as section 327A of that enactment :

"Where claim is established only to a share of any property. 327A. Where any claim is established only to a share of any property, it shall be competent for the court in any order made under the preceding sections, to direct that the judgment creditor be put into or restored, to, possession of the share of the property to which no claim has been established".

Amendment of section principal enactment **17.** Section 828 of the principal enactment is hereby amended by the substitution, for the words "property or part thereof, as the case may be.", of the word " property or part thereof, as the case may be. Every inquiry under this section shall be concluded within sixty days of the date fixed for the filing of objections.".

Amendment of section 338 of the principal enactment. **18.** Section 338 of the principal enactment is hereby amended by the repeal of paragraph (b) of subsection (3) thereof, and the substitution therefor of the following paragraph:

' (b) "legal representative" means an executor or administrator or the next of kin who has adiated the, inheritance;'.

Amendment of section 341 of the principal enactment **19.** Section 341 of the principal enactment is hereby amended as follows : -

(1) by the insertion immediately after subsection (1) thereof, of the following new subsection :

" (1A) On an application made under subsection (1). the court shall enter the name of the legal representative on the record in place of the name of the deceased and shall proceed to determine the application for execution. " ; and

(2) by the addition immediately after subsection (2) thereof, of the following new subsection-

" (3) If the judgement-creditor dies before the decree has been fully executed, the legal representative may apply to the court to have his name entered on the record in place of the deceased and the court shall thereupon enter his name on the record."

Amendment of section 394 **20.** Section 394 of the principal enactment is hereby amended by the repeal of the definition of "legal representative" in subsection (2) thereof, and the substitution therefor of the following definition :-

"legal representative" means an executor or administrator or the next of kin who has adiated the inheritance".

Amendment of section 437 **21.** Section 437 of the principal enactment is hereby amended by the substitution for all the words from " Commissioner to administer Oaths within the local limits " to the end of that section of the following:

"Commissioner for Oaths, or in the case of an affidavit sworn or affirmed In a country outside Sri Lanka, before any person qualified to administer oath or affirmation according to the law of that country, and the fact that the affidavit bears on its (ace the name of the court, the number of the action and the names of the parties shall be sufficient authority to such court or Justice of the Peace, or Commissioner for oaths or such person qualified to administer the oath or affirmation."

Replacement of section 438 of the enactment. **22.** Section 438 of the principal enactment is hereby repealed and the following section substituted therefor:

" Affidavit to 408. Every affidavit made in accordance with the preceding provisions shall be signed by the declarant in the presence of the court. Justice of the Peace or' Commissioner for oaths, or person qualified before whom it is sworn or affirmed."

Amendment of section 439 of the principal enactment. **23.** Section 439 of the principal enactment is hereby amended by the substitution for the won, "Justice of the Peace or Commissioner wherever those words appear in that section of the words Justice of the Peace, Commissioner for Oaths, or person qualified before whom it is sworn or affirmed,".

Amendment of section 440 of the principal enactment. **24.** Section 440 of the principal enactment is hereby amended by the substitution for the words Justice of the Peace or Commissioner before whom ", of the words Justice of the Peace or Commissioner for oaths, or the person qualified before whom,".

Amendment of section 519 of the principal enactment. **25.** Section 519 of the principal enactment is hereby amended as follows:

(1) In subsection (1) thereof, by the substitution for the words " Upon any such application being made and in every case in which the estate of the testator amounts to, or exceeds in value twenty thousand rupees whether any such application shall have been made or not," , of the words "Upon any such application being made," ; and

(2) in the marginal note to that section, by the substitution for the words "Probate or administration compulsory where value of estate is or over twenty thousand rupees ", of the words " Probate or administration ".

Amendment of section S22 of the principal enactment **26.** Section 522 of the principal enactment is hereby amended as follows :

(1) by the repeal of paragraph (c) thereof; and

(2) by the renumbering of paragraphs, (d) and (e) there- of, as paragraphs (c) and (d) respectively.

Amendment of section 524 of the principal enactment. **27.** Section 524 of the principal enactment is hereby amended by the repeal of subsection (4) thereof, and the substitution therefor, of the following subsection :

- ' (4) The petitioner shall tender with the petition
- (a) draft order nisi;
- (b) the requisite stamps for the order nisi and service thereof;
- (c) draft notice of order nisi in the form No. 84A in the First Schedule;
- (d) the consent in writing of such respondents as consent to his application, ".

Amendment of section 525 of the principal enactment. **28.** Section 523 of the principal enactment is hereby amended by the repeal of subsection (2) thereof, and the substitution therefor, of the following subsection:

- " (2) The petitioner shall tender with the petition
- (a) the draft order absolute;
- (b) the requisite stamps for such order absolute ;
- (c) the draft notice of order absolute in the Form No. 84s in the First Schedule."

Replacement of section 532 of the principal enactment **29.** Section 530 of the principal enactment Is hereby repealed, and the following section substituted therefor :

"Mode of application and proof for grant of administration,property may' be made to the District Court of the district within which the applicant resides, or within which the deceased resided at the time of his death or within which any land belonging to the deceased's estate is situated. Every such application shall be made on petition by way of summary procedure, which petition shall set out in the numbered paragraphs prescribed by section 524, the relevant facts of the absence of the will, the death of the deceased, and the heirs of the deceased to the best of the petitioner's knowledge; the petition shall also show the character in which the petitioner claims and the facts which justify his doing so. The application shall also be supported by sufficient evidence to afford prima facie proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

- (2) (a) The petitioner shall tauter with the petition
- (i) draft order nisi ;
- (ii) the requisite stamps for the order nisi and service thereof;
- (iii) craft notice of order nisi in the Form No. 84A In the First Schedule.
- (b) The petitioner may also tender with the petition the consent in writing of such respondents as consent to his application."

Repeal of sections 531A and 531B of the principal enactment. **30.** Section 531 and section 531B of the principal enactment are hereby repealed.

Amendment of section 537 of the principal **31.** Section 537 of the principal enactment is hereby amended by the substitution for the words "in pursuance of the rules of summary procedure hereinbefore

enactment.  
Replacement of  
section 639A of the  
principal enactment.

prescribed," of the words " by way of summary procedure ; ".  
**32.** Section 538A of the principal enactment is hereby repealed and the following section substituted therefor :

"Administration539A. (1) Where any legal touching the validity of the will of a deceased proceeding person or for obtaining, recalling or revoking grant of probate or letters pendants lite.. of administration is pending, the court may, either on the ground of undue delay or for any sufficient cause

(1) grant letters of administration to the estate of the deceased, to an administrator limited for the duration of such proceeding but such administrator shall be subject to the immediate control of the court and act under its direction and shall not have the right of distributing the estate and

(ii) if it becomes necessary to sell any property of the estate of a deceased person prior to the issue of probate or letters of administration the court may grant letters limited for the purpose of selling such property.

(2) The property shall then be specified in the grant and such grant shall expressly state that the letters are issued subject to the following conditions ;--

(a) that the sale shall be, if by private treaty at the price fixed by court or if by public auction, either at an upset price or otherwise ;

(b) that the net proceeds of the sale shall be deposited in court within such time as the court

(c) that the administrator to whom the letters are issued is not empowered to execute any deed of conveyance of immovable property, prior to the confirmation of sale by the court; and

(d) any other stipulations that court may in the circumstances deem fit to Impose.

(3 ) Before making an order for grant of Utters under this section, the respondents to the original petition for probate or letters of administration, shall be given notice of the application and they or any other person interested in the estate shall be heard in opposition unless they or any of them shall have signaled their assent to such sale."

Repeal of section 539B of the principal  
enactment.

**33.** Section 539D of the principal enactment is hereby repealed.

Repeal of sections 542 and 543 of the principal  
enactment.

**34.** Sections 542 and 543 of the principal enactment are hereby repealed.

Repeal of section 545 of the principal enactment.

**35.** Section 545 of the principal enactment is hereby repealed.

Amendment of section  
546 of the principal  
enactment.

**36.** Section 546 of the principal enactment is hereby amended as follows :

(1) by the substitution for the words 'made to appear that there is not resident, within the local limits of his jurisdiction, some next of kin,' of the words " made to appear that there is no next of kin,".

(2) by the substitution for the words "to administer the same." of the words "to administer the same, or by an heir,".

Repeal of section 647 of the principal enactment.

**37.** Section 547 of the principal enactment is hereby repealed.

Amendment of section 553  
of the principal enactment.

**38.** Section 553 of the principal enactment is hereby amended by the substitution for the words which any minor or minors may be entitled " of the words " which any minor or minors may be entitled :

Provided that where the parties consent, the filing of such account and payment shall be dispensed with on

payment of the stamp duty that would have been otherwise payable on the filing of such account, and the proceedings shall then be closed."

Amendment of section 554A Of the principal enactment **39.** Section 554A of the principal enactment is hereby amended by the substitution for the words " without leaving a will and leaving an estate under twenty thousand rupees in value," , of the words " without leaving a will."

Amendment of section 554AA of the principal enactment. **40.** Section 554AA of the principal enactment is hereby amended by the substitution for the words "under section 15 of the Administration of Justice Law, No. 44 of 1973 ", of the words "under Article 136 of the Constitution."

Amendment of section 582 of the principal enactment. **41.** Section 532 of the principal enactment is hereby amended by the repeal of the first proviso to that section, and the substitution therefor the following proviso :

" provided, any court having jurisdiction may allow any relative of a minor to institute or defend an action on his behalf, although a certificate of curatorship has not been granted to such relative."

Repeal of section 534 of the principal enactment. **42.** Section 584 of the principal enactment is hereby repealed.

Repeal of sections 655 and 656 of the principal enactment **43.** Sections 655 and 656 of the principal enactment are repealed.

Replacements of Repealed sections 663 of the principal enactment. **44.**Section 653 of the principal enactment is hereby repealed and the following section substituted therefor;  
"How disobedience663. An injunction or an enjoining order injunction granted by court on to injunction any such application or enjoining may, in case of disobedience be or enjoining enforced by punished the punished of the offender as for a contempt of order court."  
punished.

Replacement of section 664 of the principal enactment. **45,** Section 664 of the principal enactment is hereby repealed and the following section substituted therefor:

for injunction. 664. (1) The court shall before granting an injunction cause the petition of application for the same together with the accompanying affidavit to be served on the opposite party.

(2) Where it appears to court that the object of granting an injunction would be defeated by delay, it may until the hearing and decision of the application for an injunction, enjoin the defendant for a period not exceeding fourteen days in the first Instance, and the court may for good and sufficient reasons, which shall be recorded, extend for periods not exceeding fourteen days at a time, the operation of such order. An enjoining order made under these provisions, shall lapse upon the hearing and decision of the application for the grant of an injunction.

(3) The court may, of its own motion, or on an application made by any party, suspend the operation of an enjoining order issued under subsection (2), if it is satisfied that such order was obtained by suppression, or misrepresentation, of any material facts."

Amendment of section 665 of the principal enactment. **46.** Section 665 of the principal enactment is hereby amended by the substitution, for the words " An injunction directed ", of the words " An injunction or enjoining order directed "

Replacement of section 666 of the principal **47.** Section 666 of the principal enactment is hereby repealed and the following



enactment.

section substituted therefor:

" How order 666. An order for an injunction or enjoining order made under this set aside or Chapter may be discharged, or varied or set aside by the court, on varied. application made thereto, by any party dissatisfied with such order."

Replacement of section 667 of the principal enactment

**48.** Section 667 of the principal enactment is hereby repealed and the following section substituted therefor:

" When court 667. If it appears to the court that the injunction or enjoining order was may award applied for on insufficient grounds, or if, after the issue of an injunction or compensation.enjoining order which it has granted, the action is dismissed or judgment is given against the applicant by default or otherwise and it appears to the court, that there was no probable ground for applying for the injunction or enjoining order, the court may on the application of the party against whom the Injunction or enjoining order, issued award against the party obtaining the same, in its decree, such sum as it deems a reasonable compensation for the expense or injury caused to such party by the issue of the injunction or enjoining order. An award under this section, shall bar any action for compensation in respect of the issue of the injunction or enjoining order."

Replacement of section 753 of the principal enactment

**49.** Section 753 of the principal enactment is hereby repealed and the following section substituted therefor:

"Powers of 753. The Court of Appeal may, of its own motion or on any application revision of made, call for and examine the record of any case, whether already tried or Court of pending trial, in any court, tribunal or other institution for the purpose of Appeal. satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such court, tribunal or other institution, and may upon revision of the case brought before it pass any judgment or make any order thereon, as the interests of justice may require."

Replacement of sections 754 to 760 A of the principal enactment.

**50.** Sections 754 to 760A of the principal enactment are hereby repealed, and that following sections substituted therefor:

- ' Mode of 754, (1) Any person who shall be dissatisfied with any judgment, preferring pronounced by any original court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law.
- (2) Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding or matter to which he is, or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction' of any error in fact or in law, with the leave of the Court of Appeal first had and obtained.
- (3) Every appeal to the Court of Appeal from any judgment or decree of any original court shall be lodged by giving notice of appeal to the original court within such time and in the form and manner hereinafter provided.
- (4) The notice of appeal shall be presented to the court of first instance for this purpose by the party appelland or his registered attorney within a

period of fourteen days from the date when., the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays, and the court to which the notice is so presented shall receive it and deal with it as hereinafter provided. If such conditions are not fulfilled, the court shall refuse to receive it.

(a) Notwithstanding anything to the contrary in this Ordinance, for the purposes of this Chapter

"judgment" means any judgment or order having the effect of a final judgment made by any civil court; and "order" means the final expression of any decision in any civil action proceeding or matter, which is not a judgment

755. (1) Every notice of appeal shall be distinctly written, on good and suitable paper and shall be signed by the appellant or his registered attorney and shall be duly stamped. Such notice shall also contain the following particulars:

(a) the name of the court from which the appeal is preferred;

(b) the number of the action;

(c) the names and addresses of the parties to the action ; (d) the names of the appellant and respondent ;

(e) the nature of the relief claimed: Provided that where the appeal is lodged by the Attorney-General, no such stamps shall be necessary.

(2) The notice of appeal shall be accompanied by

(a) except as provided herein, security for the respondent's costs of appeal in such amount and nature as is prescribed in the rules made by the Supreme Court under Article 136 of the Constitution, or acknowledgment or waiver of security signed by the respondent or his registered attorney; and

(b) proof of service, on the respondent or on his registered attorney, of a copy of the notice of appeal, in the form of a written acknowledgment of the receipt of such notice or the registered postal receipt in proof of such service.

(3) Every appellant shall within sixty days from the date of the judgment or decree appealed against, present to the original court, a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by section 753, which shall be signed by the appellant or his registered attorney Such petition of appeal shall be exempt from stamp duty: Provided that, if such petition is not presented to the original court Within sixty days from the date at the judgment or decree appealed against. the court shall refuse to receive the appeal.

(4) Upon the petition of appeal being filed, the court shall forward the petition of appeal together with all the papers and proceedings of the case relevant to the Judgment or decree appealed against, as speedily as possible to the Court of Appeal, retaining however an office copy of the judgment or decree appealed against, for the purposes of execution if necessary. Such proceedings shall be accompanied by a certificate from the Registrar of the Court stating the dates of the institution and decision of the case, in whose favour it was decided and the dates on which the notice and the petition of appeal were filed, and the opinion of the Judge

as to whether or not there is a right of appeal against the judgment or decree appealed against.

(5) On receipt of the petition of appeal, the Registrar of the Court of Appeal shall forthwith number the petition and shall enter such number in the Register of Appeals and notify the parties concerned by registered post: Provided that where the judge of the original court has expressed an opinion that there is no right of appeal against the judgment or decree appealed against, the Registrar shall submit the petition of appeal to the President of Court of Appeal or any other judge nominated by the President of Court of Appeal who shall require the petition to be supported in open court by the petitioner or an attorney on his behalf on a day to be fixed by such judge, and the Court having heard the petitioner or his attorney, may, reject such petition or fix a date for the hearing of the petition, and order notice thereafter to be issued on the respondent or respondents:

Provided further that, when a petition is rejected under this section the court shall record the reasons for such rejection.

Security to be by bond and with 756. (1) The security to be required from a party appellant shall be by bond (Form No. 129, First Schedule) with one or more good and sufficient surety or sureties, or shall be by way of mortgage of immovable property or deposit and hypothecation by bond of a sum of money, sufficient to cover the cost of the appeal find to no greater amount.

(2) Security shall be dispensed with where the appellant is

(a) the Attorney-General;

(b) the spouse in a matrimonial action in whose favour and order for alimony pendente lite has been made;

(c) an insolvent in respect of Insolvency proceedings;

(d) exempted from depositing security by any other written law.

Procedure in application for leave to appeal 757. (1) Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter shall be made by petition duly stamped, addressed to the Court of Appeal and signed by the party aggrieved or his registered attorney. Such petition shall be supported by affidavit, and shall contain the particulars required by section 753, and shall be presented to the Court of Appeal by the party appellant or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced, exclusive of the day of that date itself, and of the day when the application is presented and of Sundays and public holidays, and the Court of Appeal shall receive it and deal with it as hereinafter provided and if such conditions are not fulfilled the Court of Appeal shall reject it. The appellant shall along with such petition, tender as many copies as may be required for service on the respondents.

(2) Upon an application for leave to appeal being filed, the Registrar of the Court of Appeal shall number such application and shall, within three days of such filing, submit such application to the President of the Court of Appeal or a judge nominated by the President of the Court of Appeal, in chambers.

(3) A judge to whom an application for leave to appeal has been submitted may

(a) forthwith fix a date for the hearing of the application and order notice

thereof, to be issued on the respondent or respondents; or  
(b) require the application to be supported in open court by the petitioner or an attorney-at-law on his behalf on a date to be fixed by such judges and the court having heard the petitioner or his attorney-at-law may reject such application or fix a date for the hearing of the application and order notice thereof to be issued on the respondent or respondents : Provided that when an application is rejected under this subsection, the court shall record the reasons for such rejection,

(4) Where notice is ordered to issue, the Registrar of the Court of Appeal shall accordingly issue notice on each respondent or his registered attorney by registered post and shall also annex to it a copy of the petition of appeal furnished by the appellant. On the date specified in the notice, or on such other date as the court shall then fix, the court shall hear the application for leave to appeal and grant or refuse, leave to appeal.

(5) Upon leave to appeal being granted, the Registrar of the Court of Appeal shall immediately inform the original court, and, unless the Court of Appeal has otherwise directed, all proceedings in the original court shall be stayed and the said court shall as speedily as possible forward to the Court of Appeal all the papers and proceedings in the case, relevant to the matter in issue.

758. (i) The petition of appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars; (a) the name of the court in which the case is pending; (b) the names of the parties to the action; (c) the names of the appellant and of the respondent; (d) the address of the Court of Appeal; (e) a plain and concise statement of the grounds of objection to the judgment, decree or order appealed against such statement to be set forth in duly numbered paragraphs; (f) a demand of the form of relief claimed. In deciding (2) The court in deciding any appeal not confined shall not be confined to the grounds set forth by the appellant, but it shall get forth not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of being heard on that ground.

Where petition to be rejected. 759. (1) If the petition of appeal is not drawn up in the manner set out in the preceding section it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court; or be amended then and there. When the court rejects any petition of appeal under this section, it shall record the reasons for such rejection. And when any petition of appeal is amended under this section, the judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature. (2) In the case of any mistake, omission or defect on the part of any appellant in complying with the provisions of the foregoing sections, (other than a provision specifying the period within which any act or thing is to be done) the Court of Appeal may, if it should be of opinion that the respondent has not been materially prejudiced, grant relief on such terms as it may deem just

When one of several plaintiffs or defendants 760. When there are more plaintiffs or more defendants than one in an action, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Court of Appeal may reverse or modify the decree in favour of all the

whole plaintiffs or defendants, as the case may be.  
decree.

Amendment of section 785 of the principal enactment. **51.** Section 765 of the principal enactment is hereby amended by the substitution for the words and figures, " section 754 and 756 " of the words and figures, " sections 754, 755 "

Insertion of new chapter in the principal enactment. **52.** The following new Chapters are hereby inserted immediately after section BOO of the principal enactment and shall have effect as Chapter LXVI and Chapter LXVII of that enactment:

provisions for small provisions as to CLAIMS Courts, 801. The following special procedure In Small Claims Courts, shall be taken as limiting and controlling the general provisions hereinbefore contained, but so far only as any such provisions are either expressly or impliedly applicable to such courts. Such general provisions shall apply to Small Claims Courts in all respects whenever they are not inconsistent with the special provisions contained in this Chapter, but where there is any such inconsistency the special provisions herein contained shall apply.

filing of complaint and pleadings, 802. (1) An action may be instituted in the Small Claims Court by the plaintiff presenting or transmitting to the court a duly signed written statement in plain or concise language, or the plaintiff may state his case orally to the judge of such court who shall cause it to be reduced into writing, and obtain the plaintiff's signature to it, and the statement so taken down in writing or the statement presented or transmitted to the court, shall be deemed to be the plaint in the case.

(2) The pleadings in the Small Claims Courts shall be limited to the following :

- (a) the plaint of the plaintiff;
- (b) the answer and claim in reconvention (if any) of the defendants;
- (c) the plaintiff's reply to the defendants claim in reconvention, but where there is no claim, in reconvention there shall be no further pleadings beyond the answer.

803. The plaint, or statement by way of plaint, shall bear the serial number of the court in the order in which, and the date of the day and year on which, it was filed, and shall state the names and residences of the parties.

804. The plaint must state in a plain and direct manner the facts constituting the cause of action.

806. Upon such plaint or statement being filed as aforesaid the court shall, by a note thereon, appoint a date for the appearance of the defendant, such date being a day not later than three months from the date of institution of the action in court and shall inform the plaintiff or his attorney at-law thereof; and the court shall also issue a summons for the appearance of the defendant, stating therein the names and residences of the parties, the substance of the claim, and the number of the case. Every such summons shall be in the Form No. 10 in the First Schedule,

807. All summonses, orders, and other process issuing from any Small Claims Court shall be signed by the Registrar of the Court, and shall be transmitted to any Fiscal within Sri Lanka for service or execution: Provided that where it shall be made to appear to the court that service of any summons, order, or process (excepting writs of execution and of possession) may be more conveniently or speedily effected otherwise than by transmitting

the same to a Fiscal, it shall be lawful for the court, by endorsement on any such summons, order, or process, to direct that the same may be served by any person named therein; Provided further that where the Fiscal of the court fails, due to circumstances beyond his control to serve summons on the defendant as specified above, the court may at its discretion extend the period fixed for the return of summons to another date, such date being a day not later than three months from the date on which the defendant was first required to answer the plaint

808. Sections 59 to 71, (both inclusive) and Chanter XXIII of this Ordinance shall apply to the service, return, and proof of service of summons of the Small Claims Court in so far as they are not inconsistent with the provisions contained in the last preceding section.

809. (1) At the place and on the date specified In the summons the defendant shall be called upon to admit or deny the plaintiff's claim.

(2) If the defendant shall admit the claim, the court shall enter, such admission on the record in the Form No.35 in the First Schedule, and shall require the defendant to sign the same and enter judgment for the plaintiff: Provided that it shall be lawful for a defendant, who cannot conveniently attend court, to forward his admission to the Registrar, signed by himself in the presence and under the attestation of an attorney-at-law, known to him, and upon the receipt and entry of such admission, the court shall accordingly enter judgment for the plaintiff.

(3) If the defendant shall deny the claim he shall be called upon to plead to the same forthwith, or within such time as the court on cause shown may allow; and he shall either state his defence orally to court, and the court shall cause it to be reduced to writing and obtain the defendant's signature to it, or he shall deliver to the Registrar an answer In writing, at provided in section 73 setting out his defence, and any claim In reconvention which he may have against the plaintiff. Such answer shall be signed by the defendant, or he attorney-at-law, and shall be duly stamped and dated, and forthwith filed of record by the Registrar.

Examination of parties. Of the claim in reconvention. 810. The parties may at any stage of the proceeding be examined by court with the view of ascertaining the points at issue between them and of dispensing with any unnecessary evidence.

Action founded upon account or instrument for the payment of money only, it is sufficient for the party to deliver the instrument, or a copy of the account, to the court, and to state that there is due to him thereupon from the adverse party a specified sum which he claims to recover or set off. 813. For the purpose of setting forth a cause of action, or claim in reconvention founded upon an account or upon an instrument for the payment of money only, it is sufficient for the party to deliver the instrument, or a copy of the account, to the court, and to state that there is due to him thereupon from the adverse party a specified sum which he claims to recover or set off.

Immaterial variance to be disregarded. 814. A variance between an allegation in a pleading and the proof shall be disregarded as immaterial, unless such proof discloses a new cause of action, or the court is satisfied that the adverse party has been misled there by to his prejudice.

Amendment of pleading. 815. The provision of section 93 shall apply mutatis mutandis in respect of amendment of pleadings in the Small Claims Courts.

Consequence of neglect to plead claim 816. Where the defendant in any action neglects to interpose a claim in reconvention consisting of a cause of action in his favour for a like cause, which might have been all owed to him at the trial of the action, he and every

in person deriving title thereto, through or from him, are for ever thereafter reconvention. precluded from maintaining an action to recover the

817. The prohibition in the last section contained does not extend to the following cases: (a) where the amount of the claim in reconvention exceeds the monetary jurisdiction of the court; (b) where the claim in reconvention consists of a judgment rendered before the commencement of the action in which it might have been interposed; (c) where the claim in reconvention is for unliquidated damages; (d) where the claim in reconvention consists of a claim upon which another action was pending at the time the action was commenced; (e) where judgment is taken against the defendant without personal service of summons upon him, or an appearance by him.

disputes  
affecting  
land.

833c, (1) Whenever owing to ft dispute affecting land a breach of the peace is threatened or likely

(a) the police officer inquiring into the dispute shall (i) with the least possible delay file a statement relating to the dispute in the Small Claims Court, within whose jurisdiction the land is situate, and require each of the parties to the dispute to enter into a bond for his before the Judge of the Small Claims Court, or warn him to appear before such Court on a date which is not later than one week from the date of the filing of such statement ; or (iii) if necessary in the interests of preserving the peace, arrest the parties to the dispute and produce them forthwith before the Small Claims Court within whose jurisdiction the land is situate, to be dealt with according to law, and shall also at the same time file in that court a statement regarding the dispute ; or

(b) any party to such dispute may file an affidavit in the Small Claims Court vetting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute. The court shall thereupon by its usual process or by registered post notice the parties so named, to appear in court on the date specified in the notice, such date being not later than three weeks from the date on which the affidavit was filed, and shall require them to file affidavits setting out their claims, annexing thereto any documents (or certified copies thereof) on which they rely.

(2) Where a statement or affidavit is filed in a Small Claims Court under subsection (1), the Small Claims Court shall have and is hereby vested with jurisdiction to inquire into, and make a determination or order (to the dispute.

(3) On the date on which the parties are produced under sub-paragraph (ii) of para graph (a) of subsection (1) or on the date fixed for their appearance in court under sub-paragraph (i) of paragraph (a) of that subsection, the court shall appoint a date being a date not later than three weeks from the date on which the parties are so produced or on the date so fixed for their appearance, directing the parties to file affidavits setting out their claims and annexing thereto any documents (or certified copies thereof) on which they rely

(4) The court shall, not later than one week of thy filing of the information, cause a notice to be affixed in a conspicuous place on the land or part of the land, which is the subject matter of the dispute announcing that a dispute affecting the land has arisen and requiring any person interested to appear in court on the date specified in such notice, such date being the day on which the case is next being called in court. The notice shall also require that the person interested shall, in addition to appearing in court, file an affidavit

setting out his claim and annexing thereto any documents (or certified copies thereof) on which he relies.

(5) Where any affidavits and documents are filed on the date fixed for filing them, the court shall, on application made by the parties filing affidavits, grant such parties time not exceeding two weeks for filing counter-affidavits with documents if any. The court shall permit such parties or their attorneys-law to peruse the record in the presence of the Registrar for the preparation " of the counter-affidavits.

(6) On the date fixed for filing affidavits and documents, where no application has been made for filing counter-affidavits, or on the date fixed for filing counter-affidavits, whether or not such affidavits, counter-affidavits, and documents have been, filed,-

(i) the court shall make every effort to injure the parties and the persons interested (if any) to arrive at a settlement of the dispute, and if the parties and persons interested agree to a settlement, the settlement shall be recorded and signed by the parties and persons interested and an order made in accordance with the terms of settlement; or

(ii) where the parties -and persons interested (if any) do not arrive at a settlement, the court shall determine the dispute on the statements filed and the affidavits and documents furnished and shall make an order accordingly, within one week of the date

Interim order. 833D. At any time after proceedings are commenced under this Chapter it shall be lawful for the Judge of the Small Claims Court to make an interim order in terms of any order which he is empowered to make under this Chapter, to be in operation until the conclusion of such proceedings.

Security for possession or exercise of any right may be ordered. 833K. An order made under this Chapter may also contain such other directions as the Judge of the Small Claims Court thinks fit with regard to the furnishing of security for the exercise of the right of possession of the land or part thereof for the exercise of any right in such land or with regard to the sale of any crop or produce, or the manner of exercise of any right in such land or the custody or disposal of the proceeds of the sale of any crop or produce.

Order where no party appears. 833L. Where the parties to the dispute do not appear before court or having appeared or been produced, do not file any affidavit whether with or without documents annexed, the court shall

(a) in a case where the dispute is in regard to possession, make order permitting the party in possession to continue in possession ; and

(b) in a case where the dispute is in regard to any other right, make order permitting the status quo in regard to such right, to continue.

833M. In making a determination and order under this Chapter the Judge of the Small Claims Court shall only take into consideration the statement filed and the affidavits and documents furnished by the parties. No party shall be permitted to lead oral evidence at any hearing or inquiry under this Chapter.

Meaning of dispute affecting land . 833Q. In this Chapter "dispute affecting land " includes any dispute as to the right to the possession of any land or part thereof and the buildings thereon or the boundaries thereof, as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land, or part of a land, or as to any right in the nature of a servitude affecting the land and any reference to "land" in this Chapter includes a reference to any building standing thereon.

Fiscal to 833R. The Fiscal shall, where necessary, execute all orders made under the



execute provisions of this Chapter.  
orders of  
court.

Amendment of First Schedule to the principal enactment **53.** The First Schedule to the principal enactment is hereby amended as follows:

(1) by the substitution for the words "Chief Clerk" in Form No. 135 of the word "Registrar ", and

(2) by the substitution for the Form No. 136 of the following Form;

Amendment of Second Schedule to the principal enactment **54.** The Second Schedule to the principal enactment is hereby amended by the addition at the end of that Schedule of the following new Part:

" PART IV

(Section 833) SMALL CLAIMS COURT The scale of coats and charges to be paid to registered attorneys in the Small Claims Courts, as well between party and party, as between registered attorney and Client, shall be the same as is applicable to District Courts, and specified in Parts I and II of this Schedule."-