

CHAPTER 18

PRIMARY COURTS' PROCEDURE

AN ACT TO REGULATE THE PROCEDURE IN PRIMARY COURTS AND TO MAKE PROVISION
FOR CONNECTED MATTERS.

[2nd July, 1979.]

1. This Act may be cited as the Primary Courts* Procedure Act.

PART I
GENERAL

2. The civil and criminal jurisdiction of Primary Courts shall, subject to the provisions of this and any other written law, be exclusive.

3. Where in any case, whether civil or criminal instituted before a District Court or a Magistrate's Court, it appears to such court at any stage of the proceedings that the case is one within the exclusive jurisdiction of a Primary Court, the court may stop the further progress of the case and refer the parties to such Primary Court, and where such case is a civil case, may also make such order as to costs as may seem just.

4. (1) Where a criminal prosecution or proceeding for an offence within the exclusive jurisdiction of a Primary Court is pending in such court it shall be lawful, where it is deemed to be appropriate in the circumstances, for the Court of Appeal on an application by any party interested or for the Attorney-General, to direct the transfer of such prosecution or proceeding to a Magistrate's Court specified in such direction.

(2) Where a direction made under subsection (1) is communicated to the Judge of the Primary Court in whose court such case is pending, he shall stop the further progress of the case and transmit the case record and all connected papers to the Magistrate's Court specified in such direction.

(3) The Magistrate's Court referred to in subsection (2) shall proceed to hear, try and determine such case transferred to it as if it were a prosecution or proceeding instituted in that Magistrate's Court and shall have and be vested with full power and jurisdiction so todo.

5. Where it is made to appear to the Court of Appeal on an application by one of the parties or otherwise that any civil action or proceeding instituted in a Primary Court may owing to the circumstances or questions involved be more appropriately tried before the District Court having local jurisdiction, it shall be lawful for the Court of Appeal to call for and inspect the record or journal of such action or proceeding and to stay the proceedings in the Primary Court and to make order transferring such case to such District Court for hearing and determination. Upon such order being communicated to the Judge of the Primary Court in whose court the action or proceeding is pending he shall stop the further progress of the action or proceeding and transmit the record of that action or proceeding and all connected papers to the District Court specified in the order. Thereupon such District Court shall proceed to hear, try and determine such action or proceeding as if it were an action or proceeding instituted in that District Court and shall have and be vested with full power and jurisdiction so to do.

6. Where it is made to appear to any Primary Court-

- (a) in regard to any prosecution for any offence pending before it that in the circumstances of the case the offence cannot adequately be punished by any penalty which the Primary Court is authorized by law to impose; or
- (b) in regard to any civil action or proceeding pending before it that the action or proceeding may more appropriately be tried before a District Court,

it shall be the duty of the Judge of such Primary Court to suspend the further hearing of the prosecution or civil action or proceeding, as the case may be, and to report it to the Court of Appeal with a view to obtaining an order under section 4 or section 5.

Power of Court of Appeal to transfer case to District Court.

Judge of the Primary Court to report cue more appropriately triable elsewhere to Court of Appeal for order.

Where case is beyond jurisdiction duty to refer party to competent court.

7. (1) Where it appears in the course of any prosecution, civil action or proceeding before a Primary Court that such prosecution, action or proceeding is not within its jurisdiction, it shall be the duty of such Primary Court to stop the proceedings and to refer the party by whom the prosecution, action or proceeding was instituted to the competent court.

(2) Where a Primary Court stops the proceedings in any prosecution, civil action or proceeding and refers the party by whom the prosecution, civil action or proceeding was instituted to the competent court under subsection (1), that prosecution, civil action or proceeding shall not operate as a bar to the institution of a prosecution, civil action or proceeding in the competent court in respect of the same offence or matter.

PART II

POWERS OF PUNISHMENT

Sentences which a Primary Court may pass.

8. (1) A Primary Court may pass any of the following sentences-

- (a) imprisonment of either description for a term not exceeding three months;
- (b) fine not exceeding two hundred and fifty rupees;
- (c) whipping with a light cane if the offender is under sixteen years of age;
- (d) any lawful sentence combining any two of the sentences aforesaid.

(2) In the event of default of payment of any fine imposed on an accused the Judge of the Primary Court may subject to the provisions of this Part-

- (a) where the amount of the fine does not exceed twenty-five rupees sentence the accused to imprisonment of either description for a term not exceeding seven days;
- (b) where the amount of the fine exceeds twenty-five rupees but does not exceed fifty rupees sentence the accused to imprisonment of either description for a term not exceeding fourteen days;
- (c) where the amount of the fine exceeds fifty rupees sentence the accused to imprisonment of either description for a term not exceeding one month.

(3) Anything in this section shall not be construed as derogating from any special powers of punishment that may be given to a Primary Court by this or any other law.

9. Notwithstanding anything in this Act, the Penal Code or any other written law to the contrary, a Primary Court shall not sentence any person to imprisonment, whether in default of payment of a fine or not, for a term which is less than seven days.

sentence of imprisonment for term of less days.

10. A Primary Court may, in any circumstances in which it is empowered by any written or other law to sentence an offender to imprisonment, whether in default of payment of a fine or not, in lieu of imposing a sentence of imprisonment order that the offender be detained in the precincts of the court until such hour on the day on which the order is made, not being later than 4 p.m. as the court may specify in the order.

Sentences of detention in precincts of court in lieu of imprisonment.

11. (1) A Primary Court may award such term of imprisonment in default of payment of a fine as is authorized by law in case of such default, provided that the term awarded is not in excess of the court's power under this Act.

Power of Primary Court to sentence to imprisonment in default of payment of fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the court under section 8.

12. (1) A Primary Court may, in lieu of imposing a sentence of imprisonment on conviction of an accused person or in lieu of imposing a sentence of imprisonment on an accused person in default of payment of a fine, enter an order hereinafter referred to as a "community service order" directing the accused person to perform stipulated service at a named place in a State or State-sponsored project or establishment.

Community service order.

(2) A community service order entered under subsection (1) shall be carried out in such manner as the Judge of that court may direct.

(3) The duration of a community service order shall not be more than three months.

(4) If the convicted person in respect of whom a community service order has been entered fails to attend at the place named or having attended fails to do the stipulated

service or is irregular in attendance or does not work to the satisfaction of the person in charge or control of the place named or otherwise fails to comply with the order, then it shall be lawful for the Primary Court to revoke it and impose such sentence of imprisonment as it thinks fit.

(5) Throughout the duration of the community service order, the person in charge or control of the place named shall forward, every month to the Primary Court which entered the order, a report on the attendance and work of the convicted person and stating whether the order is being or has been complied with and such report shall be final and conclusive on such questions.

Suspended sentence of imprisonment.

13. (1) Where a Primary Court imposes a sentence of imprisonment on an offender it may order that the sentence shall not take effect unless during the period of eighteen months from the date of the order the offender commits another offence punishable with imprisonment.

(2) Where a Primary Court makes an order under subsection (1) of this section, the provisions of the Code of Criminal Procedure Act relating to suspended sentences of imprisonment other than subsections (1) and (2) of section 303 of that Act shall apply, *mutatis mutandis*, to that order, and for that purpose the period of eighteen months referred to in subsection (1) of this section shall be deemed to be the "operational period" referred to in those provisions.

Sentence in case of conviction for several offences at one trial.

14. (1) When a person is convicted at one trial of any two or more distinct offences the Primary Court may subject to subsection (3) sentence him for such offences to the several punishments prescribed therefor which the court is competent to inflict; such punishments when consisting of imprisonment to commence, unless the court orders them or any of them to run concurrently, the one after the expiration of the other in such order as the court may direct;

Provided that the aggregate punishment shall not exceed twice the amount of punishment which such court in the exercise of its ordinary jurisdiction is competent to inflict.

(2) For the purpose of appeal aggregate sentences passed under this section in case of conviction for several offences at one trial shall be deemed to be a single sentence.

(3) The provisions of sections 55 and 67 of the Penal Code shall apply to all offences whatever.

15. Whenever a Primary Court acquits or discharges the accused and declares that the complaint was frivolous and vexatious, it shall be lawful for such court to order the complainant to pay-

Payment of costs and compensation when complaint is frivolous or vexatious.

(a) State costs in a sum not exceeding fifty rupees; and

(b) compensation in a sum not exceeding fifty rupees to the accused or to each accused if there are more than one accused.

16. Whenever any person is convicted of any offence or where a Primary Court holds the charge proved but proceeds to deal with the offender without convicting him, the court may order the offender to pay within such time or in such instalments as the court may direct, such sum by way of compensation not exceeding two hundred rupees to any person affected by the offence as to the court shall seem fit. Any sum awarded under this section and section 15 shall be recoverable as if it were a fine imposed by the court:

Payment of compensation upon conviction.

Provided that if the offender is under the age of sixteen years, the court may if it thinks fit order the payment under this section to be made by the parent or guardian of such offender.

17. Whenever a Primary Court imposes a fine or passes a sentence of which fine forms a part the court may order the whole or any part of the fine recovered to be paid to the person affected by the offence.

Court may order payment of the fine paid or part of it to injured party.

18. Whenever a Primary Court holds that the charge is proved but is of opinion that having regard to the character, antecedents, age, health or mental condition of the person charged or the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment or that it is expedient to

Power of court to permit conditional release of offenders.

discharge the offender conditionally as hereinafter provided, the court may without proceeding to conviction-

- (a) order such offender to be discharged after such admonition as to the court shall seem fit;
- (b) order such offender to pay State costs not exceeding fifty rupees;
- (c) order compensation under section 16 ;
- (d) discharge the offender conditionally on his entering into a recognizance with or without sureties to be of good behaviour, and to appear for conviction and sentence when called on at any time during such period, not exceeding eighteen months, as may be specified in such order ;
- (e) deal with the offender under the provisions of the Probation of Offenders Ordinance.

Conditions of recognizance.

19. A recognizance under section 18 may contain such conditions as the court may, having regard to the particular circumstances of the case, order to be inserted therein with respect to all or any of the following matters :-

- (a) for prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places;
- (b) as to abstention from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink;
- (c) generally for securing that the offender should lead an honest and industrious life;
- (d) providing that the offender, with his surety or sureties, if any, shall appear in chambers before the Judge of the Primary Court at such intervals as may be specified in the order;
- (e) directing the payment of compensation and State costs as provided in sections 16 and 18.

Power of court to vary conditions of recognizance.

20. The court before which any person is bound by his recognizance under this Act to appear for conviction and sentence may vary the conditions of the recognizance, and may,

on being satisfied that the conduct of that person has been such that the recognizance should be discharged, discharge the recognizance.

21. (1) If the court before which an offender is bound by his recognizance under section 18 to appear for conviction and sentence is satisfied on information that the offender has failed to observe any of the conditions of his recognizance it may issue a summons for the attendance of the offender and his sureties (if any) before it.

(2) If upon such summons the attendance of the offender and his sureties (if any) cannot be procured the court may issue a warrant for such purpose.

(3) When the offender appears or is brought before the court before which the offender is bound by his recognizance to appear for conviction and sentence that court on being satisfied after summary inquiry that he has failed to observe any condition of his recognizance may forthwith convict and sentence him for the original offence; or, if the case was one in which the court in the first instance might under the Children and Young Persons Ordinance, have ordered the offender to be sent to an approved or certified school, and the offender is still apparently under the age of sixteen years, make such an order.

22. In lieu of ordering any male person under the age of sixteen years to be fined or imprisoned, a Primary Court may order such person to be whipped in accordance with the provisions of the Corporal Punishment Ordinance and section 294 of the Code of Criminal Procedure Act:

Whipping in certain cases.

Provided that a Judge of a Primary Court shall not have power to order more than six strokes with a light cane to be inflicted on any such person.

23. (1) Where a person has been sentenced to a fine only and to imprisonment in default of payment of the fine a Primary Court may do all or any of the following things :-

Fine may be paid in instalments.

- (a) allow time for the payment of the fine;
- (b) direct payment of the fine to be made by instalments;

(c) direct that the person liable to pay the fine shall be at liberty to give to the satisfaction of the court a bond, with or without a surety or sureties, for the payment of the fine or any instalment thereof.

(2) Where a fine is directed to be paid by instalments and default is made in the payment of any one instalment the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid.

PART III

OF THE MODE OF INSTITUTION OF CRIMINAL PROSECUTIONS

Mode of
institution of
prosecution.

24. Every criminal prosecution or proceeding for an offence triable by a Primary Court shall be instituted in the Primary Court within the local limits of whose jurisdiction the offence was committed:

Provided that where an offence is committed partly within the local limits of a Primary Court and partly within the local limits of another Primary Court, a criminal prosecution or proceeding in respect of that offence may be instituted in any of such courts.

Institution of
proceedings in
Primary
Courts.

25. (1) A criminal prosecution or proceeding may be instituted in a Primary Court by presenting or transmitting a written complaint duly signed to the court by the complainant or the complainant may state his case orally to the Judge of such court who shall reduce it into writing and obtain the complainant's signature to it or cause it to be reduced into writing and signed and the statement so taken down in writing shall be the complaint in the case :

Provided that where the complainant is a local authority, the complaint may be signed by the chief executive officer of such local authority or by any officer of such local authority duly authorized to appear on behalf of such local authority. In this proviso " local authority " shall have the same meaning as in the Constitution.

(2) Every such complaint shall be dated and sealed with the seal of the court and

numbered in the order in which it was received, and shall form the commencement of the proceedings in respect thereof.

26. (1) Where proceedings have been instituted in a Primary Court, the court shall, if an offence is disclosed issue summons on the person or persons accused where such person or persons are not already before court.

Issue of
summons or
warrant.

(2) If the summons cannot be served or the accused person or persons are absconding or likely to abscond, the court may issue a warrant.

27. Every Primary Court shall for the purpose of the exercise of its jurisdiction have full power to issue summons, warrants and other processes on persons accused before it and on witnesses and other persons whose attendance the court considers necessary and to compel the production of documents as nearly as may be in the manner provided for in the Code of Criminal Procedure Act in respect of cases instituted in a Magistrate's Court.

Power of court
to issue process.

28. (1) When the accused appears, the Judge of the Primary Court shall-

Procedure
when accused
appears.

(a) on the basis of the particulars in the complaint frame a charge ; and

(b) read and explain the charge to him and ask him if he has cause to show against it and if he makes an unqualified admission of guilt, pass sentence or make other order according to law.

(2) If the accused does not make an unqualified admission of guilt or if he refuses to plead or if he pleads not guilty, the Judge shall proceed in the manner set out in section 31.

29. (1) It shall be lawful for the complainant at any time before the verdict is given to move to withdraw the complaint and thereupon the Judge shall allow the motion and acquit the accused.

Withdrawal of
charge.

(2) If the complainant is absent without excuse on any day the case is called in open court whether for the hearing or for any other

Absence of
complainant

purpose the Judge of the Primary Court may acquit the accused unless he thinks proper to postpone the case for some other day. On ordering such postponement the Judge may order a sum not exceeding fifty rupees to be paid to the accused as costs :

Provided however that if the complainant appears in reasonable time and satisfies the Judge of the Primary Court that his absence was due to sickness, accident or some other cause over which he had no control, such Judge shall cancel any order made under this subsection.

(3) The accused may, for reasons to be recorded in writing, be discharged by the Judge at any time before verdict;

Provided, however, that the Judge may in his discretion consult the Attorney-General, prior to such discharge.

Primary Court to transmit proceedings to Attorney-General when required.

30. The Judge of a Primary Court shall whenever required in writing by the Attorney-General forthwith transmit to the Attorney-General the proceedings in any criminal case in which a trial has been or is being held before him :

Provided that the Attorney-General shall return the record to the Court not later than one month after it is received by him.

Procedure at bearing.

31. (1) It shall be the duty of the Judge of the Primary Court to inquire orally into the charge and, where appropriate by all lawful means to endeavour to bring the parties to an amicable settlement. If the parties agree to compound such offence or offences the Judge shall notwithstanding anything to the contrary in any other law, allow them to do so and make a record of the terms on which the case was compounded and after the accused has complied with such terms, record the fact and acquit the accused.

(2) If the parties refuse to compound the case, then the Judge shall proceed to try the case.

Legal representation.

32. Every accused person and every complainant shall be entitled to be represented by an attorney-at-law ;

Provided, however, that a public officer who has filed a complaint in his official capacity shall be entitled to be represented by

the Attorney-General or a State Counsel or any attorney-at-law specially or generally authorized by the Attorney-General but in the absence of such representation the public officer himself or any other public officer of the Department interested in the prosecution or with the permission of the court, an attorney-at-law may conduct the prosecution :

Provided further that an officer of any Municipality, Urban Council, Town Council or Village Council may appear in person or by an attorney-at-law to conduct the prosecution in any case in which the Municipality, Urban Council, Town Council or Village Council is interested.

33. (1) The trial in a Primary Court shall be held in the manner provided for in the Code of Criminal Procedure Act for trials in a Magistrate's Court. Procedure at trial.

(2) The provisions of sections 279 and 283 of the Code of Criminal Procedure Act shall apply to every judgment of a Primary Court and the provisions of sections 289 and 290 of that Act shall apply to every sentence of imprisonment passed by a Primary Court.

34. (1) At any stage of the trial, the Primary Court may make such order as it thinks fit for the disposal of any document or other property produced before it. Disposal of Primary Court may make such order as it thinks fit for the disposal of any document or other property produced before it. documents and productions.

(2) When an order is made under subsection (1) in a case in which an appeal lies, such order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or when such appeal is presented within such period, until such appeal has been disposed of, Stay of disposal order pending

35. The Judge of the Primary Court may, if he deems it necessary, at any stage after the appearance of parties, adjourn the hearing of the trial until he has had an opportunity of inspecting the scene of the offence or any property in respect of which the offence is alleged to have been committed. Notice of the time and place of such inspection shall be duly given by the Judge to the parties, and such notice shall state that the parties are entitled to be present at the inspection. inspection of scene.

Absence of Judge.

36. In the event of the absence of the Judge of a Primary Court without arrangements being made for an acting Judge, it shall be competent for the Registrar of the court to call and postpone to any other date all such cases, whether instituted under this Part or Part IV, as may be fixed before the court for the period during which the Judge is absent.

41. The plaintiff may unite in the same complaint two or more causes of action when they all arise-

What causes of action may be joined.

(a) out of the same transaction or transactions connected with the same subject of action ; or

(b) against the same defendant or defendants.

But it must appear on the face of the plaint that all the causes of action so united are consistent with each other, that they entitle the plaintiff to the same kind of relief, and that they affect all the parties.

PART IV

OF THE MODE OF INSTITUTION OF CIVIL ACTIONS

Institution of action.

37. Subject to the pecuniary or other limitations prescribed by any law, action may be instituted in the Primary Court within the local limits of whose jurisdiction the plaintiff or defendant or where there are two or more plaintiffs or defendants, any one of them resides.

42. Upon such plaint being filed as aforesaid the Primary Court shall appoint a day for the appearance of the defendant, and shall inform the plaintiff thereof; and shall also issue a summons for the appearance of the defendant.

Summons to issue.

Filing of plaint.

38. An action may be instituted in a Primary Court by presenting or transmitting a written statement in plain or concise language duly signed to the court by the plaintiff or the plaintiff may state his case orally to the Judge of such court who shall reduce it into writing and obtain the plaintiffs signature to it or cause it to be reduced into writing and signed 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.

PROCEEDINGS ON APPEARANCE

43. (1) At the place and on the day specified in the summons the defendant shall be called upon to admit or deny the plaintiffs claim.

The defendant to appear and admit or deny the claim.

(2) If the defendant shall admit the claim, the Judge of the Primary Court shall enter such admission on the record and shall require the defendant to sign the same and enter judgment for the plaintiff:

if the dependant admits the claim.

Pleadings.

39. The pleadings in a Primary Court shall be limited to the following :-

(a) the plaint of the plaintiff;

(b) the answer and claim in reconvention (if any) of the defendant;

(c) the plaintiffs reply to the defendant's claim in reconvention.

But where there is no claim in reconvention there shall be no further pleadings beyond the answer.

Provided that it shall be lawful for a defendant who cannot conveniently attend the court, to forward his admission to the Registrar of the court 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 Judge shall enter judgment for the plaintiff accordingly.

(3) If the defendant shall deny the claim. the Judge of the Primary Court shall fix the case to be called for a pre-trial hearing.

If the dependant denies the claim.

(4) On the day fixed for pre-trial hearing the Judge of the Primary Court shall wherever appropriate endeavour by every lawful means to conciliate the parties and settle the dispute.

Plaint to be numbered.

40. The plaint shall bear the names and residences of the parties and the date on which it is filed and shall be numbered in the order in which it was filed.

Examination of parties.

44. (1) The parties may at this stage of the proceedings be examined orally by the Judge of the Primary Court with a view to-

- (i) ascertaining the points at issue between them and of dispensing with any unnecessary evidence, and
- (ii) inducing the parties to an amicable settlement, removing the cause of disagreement between them and conciliating them.

(2) If every lawful endeavour to conciliate the parties had failed the court shall fix a date for the defendant to file his answer. The answer shall be filed, *mutatis mutandis*, in the manner set out in section 38.

Of the claim in reconvention.

45. If the defendant pleads a claim in reconvention with his answer, the plaintiff shall be called upon to admit or deny the same. If he denies the claim in reconvention, the plaintiff shall be required forthwith, or at such further time as the court shall fix, to plead thereto, and the provisions of section 38 shall, so far as applicable, *mutatis mutandis*, apply to the plaintiff's reply to the defendant's claim in reconvention :

Of the reply thereto.

Provided that the plaintiff shall not set out in his reply new matter amounting to a new cause of action if he could have pleaded the same in his original plaint.

Fixing the case for trial.

46. After the answer is filed, or, if the answer discloses a claim in reconvention, after the plaintiff's reply, if any, thereto is filed, the Judge of the Primary Court shall fix the case for trial.

Immaterial variance to be disregarded.

47. 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 thereby to his prejudice.

Legal representation.

48. Every party to an action or proceeding shall be entitled to legal representation.

Framing of issues.

49. The court shall at the trial frame the issues on which the right decision of the case appears to depend after questioning the parties and ascertaining the matters on which they are at variance- Issues need not strictly

accord with the pleadings and the court may allow an adjournment if necessary to the adverse party in consequence of new questions being raised in the issues but an amendment of pleadings shall not be allowed.

50. (1) The trial shall be held in the manner prescribed in the Civil Procedure Code for trials in regular actions in a District Court.

(2) The provisions of the Civil Procedure Code relating to judgments and decrees and the execution of decrees shall, *mutatis mutandis*, apply to judgments and decrees of a Primary Court.

51. Where in any proceeding before any Primary Court any defence or claim in reconvention of the defendant involves matter beyond the jurisdiction of the court, such defence or claim in reconvention shall not affect the competence or duty of the court to dispose of the matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but any relief exceeding that which the court has jurisdiction to grant shall not be given to the defendant upon any such claim in reconvention :

Provided always that in such case it shall be lawful for the Court of Appeal or any Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to direct that the action be transferred from the court in which it shall have been instituted to the District Court having jurisdiction over the whole matter in controversy; and in such case the Judge of the Primary Court shall transmit the record to the District Court specified in the order and the proceeding shall be continued and prosecuted in the District Court as if it had been originally commenced therein.

52. (1) The Primary Court shall have jurisdiction to summon and examine all witnesses touching the causes being tried or heard by it and if necessary to issue warrants for the apprehension and production before it of any party or witness and to deal with them according to law.

And also jurisdiction to order any party or witness or other person to produce or cause to be produced any document or thing before it provided there is no bar or privilege under

Procedure at trial.

Claim in reconvention.

Power to summon witnesses and issue warrants.

any other law in force for the time being which excuses non-production of such document or thing.

(2) The provisions of the Civil Procedure Code relating to summons and warrants shall apply as nearly as possible to summons and warrants issued under subsection (1) of this section and section 42.

OF DEFAULT OF APPEARANCE

Proceedings on default of appearance of plaintiff.

53. (1) If upon the day specified in the summons for the appearance of the defendant or upon any day fixed for the hearing of the action the plaintiff shall not appear or sufficiently excuse his absence, the plaintiff's action may be dismissed.

Provided that if the defendant appears and when called upon under section 43 shall admit the claim of the plaintiff, the Judge of the Primary Court shall enter judgment for the plaintiff according to law.

On default of appearance of defendant.

(2) If upon the day specified in the summons or upon any day fixed for the hearing of the action the defendant shall not appear or sufficiently excuse his absence, while the plaintiff appears the Judge of the Primary Court, upon due proof of service of the summons, notice, or order requiring such appearance, may enter judgment by default against the defendant.

Judgment by default may be opened up in certain cases.

(3) If the defendant shall within a reasonable time, after such judgment, by affidavit or otherwise, with notice to the plaintiff satisfy the Judge of the Primary Court that he was prevented from appearing in due time by accident, misfortune, or other unavoidable cause, or by not having received sufficient information of the proceedings, and that he did not absent himself for the purpose of avoiding service of the summons or notice, and that he has a good and valid defence on the merits of the case, then the Judge may set aside such judgment and any proceedings had thereon, and may admit the defendant to proceed with his defence upon such terms as the Judge may think fit.

If neither party appears action to be dismissed.

(4) If upon the day specified in the summons or if upon any day fixed for the hearing of the action neither party appears when the case is called the Judge of the Primary Court shall enter judgment dismissing the plaintiff's action, but without costs.

(5) When an action has been dismissed under the provisions of subsection (1) or subsection (4) and the plaintiff has by affidavit or otherwise with notice to the defendant satisfied the Judge of the Primary Court that he was prevented from appearing by accident, misfortune, or other unavoidable cause, the Judge may grant to the plaintiff permission to institute a fresh action upon such terms as may be fixed by the court, and where permission is so granted the action dismissed under subsection (1) or subsection (4) shall not operate as a bar to the institution of a fresh action.

Plaintiff may be granted permission to institute a fresh action.

(6) An appeal shall not lie against any judgment or order entered under this section for default of appearance, anything in this or any other law to the contrary notwithstanding.

An appeal from judgment or order by default not available.

PARTY

APPEALS FROM PRIMARY COURTS TO THE COURT OF APPEAL

54. (1) Subject to subsection (4) every appeal from a judgment, conviction, sentence, decree or final order of a Primary Court shall be by petition and presented to the Judge of the Primary Court, save as otherwise provided in subsection (5), within fourteen days of the date of entering of the judgment, conviction, sentence, decree or final order appealed against.

(2) Such petition of appeal shall be in writing and state shortly the grounds of appeal and be signed by the appellant or his attorney-at-law.

(3) Every such petition of appeal shall bear a stamp to the value of five rupees but where the appellant is the Attorney-General such stamp shall not be necessary.

(4) An appeal shall not lie from an acquittal by a Judge of the Primary Court except at the instance of or with the written sanction of the Attorney-General.

(5) Where the Attorney-General prefers an appeal against any judgment, sentence or final order pronounced by a Primary Court in any criminal case or matter or where the appeal is from an acquittal with the sanction of the Attorney-General, the time within which the petition of appeal must be

preferred shall be twenty-eight days from the date of entering of the judgment, sentence or order.

Procedure on receiving appeal.

55. (1) The Judge of the Primary Court shall certify on the face of the petition of appeal the date on which it was received, cancel the stamp and with the least possible delay cause the petition of appeal and the record of the case to be forwarded to the Court of Appeal.

(2) If the appellant had been committed to prison in pursuance of the judgment, sentence or final order appealed from, he shall forthwith on lodging his appeal be released on bail to appear before the Primary Court on any date notified to him and abide the order in appeal. If such appellant fails to furnish the bail ordered he may be remanded to the custody of a Superintendent of Prisons.

56. (1) The Registrar of the Court of Appeal shall on receipt of the record number and register the appeal and cause sufficient copies of the record and petition of appeal to be prepared. The appeal shall thereafter be entered on the list of appeals and shall come on for hearing on a day of which at least one month's notice shall have been given to the appellant and the other parties.

(2) The parties to the appeal shall be entitled to a copy of the record and the petition of appeal on payment therefor at the rate of twenty-five cents for every folio of one hundred words:

Provided that the Attorney-General shall be issued his copy of the record and petition of appeal free of any charge.

Hearing of the appeal.

57. (1) At the hearing all parties shall be entitled to appear or be represented by their respective attorneys-at-law.

(2) When the appeal comes on for hearing, the appellant if present shall be first heard in support of the appeal and then the respondent, if present, shall be heard against it.

(3) If the appellant does not appear to support his appeal, the Court of Appeal shall consider the appeal and may make such order thereon as it may deem fit.

58. Upon appeal the Court of Appeal may- Power of the Court of Appeal on appeals.

(a) in a criminal case -

- (i) affirm the judgment, conviction, sentence or final order appealed from and dismiss the appeal; or
- (ii) allow the appeal and set aside the judgment, conviction, sentence or final order appealed from and order a retrial or acquit the appellant or make such other order as may be appropriate; or
- (iii) vary the judgment, conviction, sentence or final order appealed from or reduce or enhance the sentence or the nature thereof; where the sentence is enhanced, the sentence shall not exceed the sentence which a Primary Court could impose ; or
- (iv) where the appeal is from an order of acquittal reverse such order and direct a new trial;

(b) in a civil case -

- (i) affirm the judgment, decree or order and dismiss the appeal; or
- (ii) allow the appeal and set aside the judgment, decree or order; or
- (iii) vary the judgment, decree or order; and
- (iv) order costs in an amount which seems to the court to be reasonable.

59. (1) On the termination of the hearing of the appeal the Court of Appeal shall either at once or on some future day which shall then be appointed for the purpose, deliver judgment in open court. Judgment in appeal to be given in open court.

(2) On the day so fixed, if the court is not prepared to give its judgment, a yet further day may be appointed and announced for the purpose.

(3) A Judge may pronounce a judgment written and signed by another Judge, but not pronounced.

Older of the Court of Appeal to be certified to Primary Court.

60. (1) Whenever a case is decided on appeal the Court of Appeal shall certify its order under its seal to the Primary Court and shall return to such court the record and petition of appeal accompanied by a copy of the reasons given for the order.

(2) The Primary Court to which the order of the Court of Appeal is certified shall thereupon make such orders as are conformable to the order so certified and if necessary the record shall be amended in accordance therewith.

Abatement of appeals.

61. Every appeal in a criminal case shall finally abate on the death of the accused.

Court of Appeal may call for record and make order.

62. (1) The Court of Appeal may of its own motion or on application by any aggrieved party call for and examine the record of any case whether already tried or pending in a Primary Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed thereon or as to the regularity of the proceedings of such court.

(2) In any such case, the Court of Appeal may make any of the orders referred to in section 58.

(3) An order under this section may not be made in a criminal case to the prejudice of the accused unless he has had an opportunity of being heard either personally or by his attorney-at-law.

(4) Anything in this section shall not be construed to authorize the Court of Appeal to convert a finding of acquittal into one of conviction.

(5) Except as hereinbefore provided, a party shall not have any right to be heard either personally or by attorney-at-law before the Court of Appeal when exercising its powers of revision:

Provided that the court may, if it thinks fit, when exercising such powers, hear any party either personally or by attorney-at-law.

(6) The provisions of section 60 shall apply in respect of the orders made by the Court of Appeal in the exercise of its powers of revision.

63. In computing the time within which Computation of an appeal shall be preferred under this Part time. the day on which the judgment, decree, sentence, conviction, or final order appealed against was pronounced or entered shall be included, but all public holidays shall be excluded.

PART VI

STAMPS AND COSTS IN CIVIL ACTIONS

64. All documents filed in a civil action instituted in a Primary Court shall be exempt from the payment of stamp duty under the Stamp Ordinance: Stamp duty ia civil actions. [2,49 of 1980.]

Provided, however, that in any such action, there shall be affixed to the plaint of the plaintiff, the answer of the defendant and the plaintiffs reply to the defendant's claim in reconvention, as the case may be, a stamp to the value of one rupee.

65. Every Primary Court shall have Costs. power upon the determination of a civil action to award to a plaintiff or defendant costs in an amount which seems to the court to be reasonable.

PART VII

INQUIRIES INTO DISPUTES AFFECTING LAND WHERE A BREACH OF THE PEACE IS THREATENED OR LIKELY

66. (1) Whenever owing to a dispute affecting land a breach of the peace is threatened or likely- Reference of disputes affecting land.

(a) the police officer inquiring into the dispute-

(i) shall with the least possible delay file an information regarding the dispute in the Primary Court within whose jurisdiction the land is situate and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the date of filing the information on which sittings of such court are held ; or

PRIMARY COURTS' PROCEDURE

- (ii) shall, if necessary in the interests of preserving the peace, arrest the parties to the dispute and produce them forthwith before the Primary 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 the information regarding the dispute; or
- (b) any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such court shall by its usual process or by registered post notice the parties named to appear in court on the day specified in the notice-such day being not later than two weeks from the day on which the information was filed.
- (2) Where an information is filed in a Primary Court under subsection (1), the Primary Court shall have and is hereby vested with jurisdiction to inquire into, and make a determination or order on, in the manner provided for in this Part, the dispute regarding which the information is filed.
- (3) On the date on which the parties are produced under subsection (1) or on the date fixed for their appearance under that subsection, the court shall appoint a day which shall not be later than three weeks from the date on which the parties were produced or the date fixed for their appearance directing the parties and any persons interested 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 the filing of the information, cause a notice to be affixed in some 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:
- Provided that where the information has been filed by a police officer, the notice referred to in the preceding provisions of this subsection shall also require that the person interested shall, in addition to appearing in court, file affidavits setting out his claims 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 Judge of the Primary Court shall permit such parties or their attorney-at-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 and documents have been filed, the court shall before fixing the case for inquiry make every effort to induce 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 as settled.
- (7) Where the parties and persons interested (if any) do not arrive at a settlement, the court shall fix the case for inquiry on a date which shall not be later than two weeks from the date on which the case was called for the filing of affidavits and documents or counter-affidavits and documents, as the case may be.
- (8) (a) Where a party or person interested is required to enter an appearance under this Part he may enter such appearance by an attorney-at-law.
- (b) Where a party fails to appear or having appeared fails to file his affidavit and also his documents (if any) he shall be deemed to be in default and not be entitled to participate at the inquiry but the court shall consider such material as is before it respecting the claims of such party in making its determination and order.

Inquiry to be held in summary manner.

67. (1) Every inquiry under this Part shall be held in a summary manner and shall be concluded within three months of the commencement of the inquiry.

(2) The Judge of the Primary Court shall deliver his order within one week of the conclusion of the inquiry.

(3) Pending the conclusion of the inquiry it shall be lawful for the Judge of the Primary Court to make an interim order containing any provision which he is empowered to make under this Part at the conclusion of the inquiry.

Determination and order of Judge of the Primary Court when dispute is in regard to possession.

68. (1) Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.

(2) An order under subsection (1) shall declare any one or more persons therein specified to be entitled to the possession of the land or the part in the manner specified in such order until such person or persons are evicted therefrom under an order or decree of a competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree.

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court.

(4) An order under subsection (1) may contain in addition to the declaration and prohibition referred to in subsection (2), a

direction that any party specified in the order shall be restored to the possession of the land or any part thereof specified in such order.

69. (1) Where the dispute relates to any right to any land or any part of a land, other than the right to possession of such land or part thereof, the Judge of the Primary Court shall determine as to who is entitled to the right which is the subject of the dispute and make an order under subsection (2).

Determination and order of Judge of the Primary Court when dispute is in regard to any other right

(2) An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of an order or decree of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid.

70. An order made under this Part may also contain such other directions as the Judge of the Primary Court may think fit with regard to the furnishing of security for the exercise of the right of possession of the land or part of it or 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.

Security for possession or exercise of any right may be ordered.

71. Where the parties to the dispute do not appear before court or having appeared or been produced do not file any affidavits whether with or without documents annexed the court shall-

Order where no party appears.

(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.

72. A determination and order under this Part shall be made after examination and consideration of-

For determination of Judge of the Primary Court, material on which he may act.

(a) the information filed and the affidavits and documents furnished;

(d) such other evidence on any matter arising on the affidavits or documents furnished as the court may permit to be led on that matter; and

(c) such oral or written submission as may be permitted by the Judge of the Primary Court in his discretion.

75. In this Part "dispute affecting land" includes any dispute as to the right to the possession of any land or part of a land and the buildings thereon or the boundaries thereof or 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 Part includes a reference to any building standing thereon.

76. The Fiscal of the court shall where necessary execute all orders made under the provisions of this Part.

PART VIII

Casus Omissus

78*. If any matter should arise for which no provision is made in this Act, the provisions in the Code of Criminal Procedure Act governing a like matter where the case or proceeding is a criminal prosecution or proceeding and the provisions of the Civil Procedure Code governing a like matter where the case is a civil action or proceeding shall with such suitable adaptations as the justice of the case may require be adopted and applied.

73. Any person who acts in contravention of or fails to comply with an order made under this Part shall be guilty of an offence and shall on conviction by a Judge of the Primary Court be liable to imprisonment of either description for a term not exceeding six months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

74. (1) An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.

(2) An appeal shall not lie against any determination or order under this Part.

* Section 77 omitted.