

CHAPTER 98

MORTGAGE

Ads AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO MORTGAGE.
 Nos. 6 of 1949,
 53 of 1949,
 II of 1953.

[16th January, 1950.]

PART I

SHORT TITLE AND INTERPRETATION

Short title. **1.** This Act may be cited as the Mortgage Act.

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

" appointed date " means the 16th day of January, 1950;

" hypothecary action " means an action to obtain an order declaring the mortgaged property to be bound and executable for the payment of the moneys due upon the mortgage and to enforce such payment by a judicial sale of the mortgaged property;

" land " includes things attached to the earth or permanently fastened to anything attached to the earth, and any estate, right, or interest in or over land ;

" mortgage " includes any charge on property for securing money or money's worth;

" mortgagee " includes any person from time to time deriving title under or through the original mortgagee.

Approved credit agencies. **3.** In this Act " approved credit agency " means—

(a) any banking company as defined in section 333 of the Companies Ordinance*, which is declared by the Director of Commerce, by

Notification published in the Gazette, to be an approved credit agency for the purposes of this Act;

(b) the State Mortgage and Investment Bank, the Loan Board, the National Savings Bank, and the Local Loans and Development Commissioners ;

(c) any other company, firm, institution, or individual for the time being declared by the Director of Commerce, by Notification published in the Gazette, to be an approved credit agency for the purposes of this Act.

PART II

HYPOTHECARY ACTIONS ON MORTGAGES OF LAND

GENERAL

4. The provisions of this Part shall apply only to a mortgage of land, to any action to enforce payment of the moneys due upon a mortgage of land, and to any hypothecary action in respect of any land. Application of this Part.

5. (1) For the purposes of this Part— Interpretation of terms in this Part.
 "person entitled to notice ", in relation to a hypothecary action in respect of any land, means any person who—

(a) has any interest in the land (whether by way of mortgage or otherwise), being an interest (i) to which the mortgage in suit in the hypothecary action has priority ; and (ii) which was created or arises by virtue of

* Repealed and replaced by the Companies Act, No. 17 of 1982.

an instrument duly registered under the Registration of Documents Ordinance, as an instrument affecting the land, prior to the time of the registration of the *Us pendens* of the hypothecary action, and

make a new entry in the register and cancel the registration of the previous address.

(4) The fee for registration of an address for service or for a change of such address shall be fifty cents for each address, with an addition of ten cents for each folio after the first in which the address is to be registered.

(b) has, prior to such time, registered an address for the service on him of legal documents in accordance with the provisions of section 6 of this Act,

7. (1) Notwithstanding anything in section 34 of the Civil Procedure Code, a claim to enforce payment of the moneys due upon a mortgage may be joined to a claim in a hypothecary action, or a separate action may be brought in respect of each such remedy. Actions on mortgage.

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

(2) In every such action the mortgagor shall be sued as defendant whether or not he is in possession of the mortgaged land at the time when the action is instituted.

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

8. An order for the issue of summons in a hypothecary action shall not be made by any court unless a declaration under the hand of an attorney-at-law is filed of record— Lis pendens to be registered, &c.

(2) Where a notice of seizure of any land is, after the registration of a mortgage of that land but before the registration of the *lis pendens* of a hypothecary action upon such mortgage, duly registered for the time being under the Registration of Documents Ordinance, the judgment creditor in the action in which such seizure was effected may register an address under section 6, and if such address is registered, shall be a person entitled to notice of the hypothecary action.

(a) certifying that the *lis pendens* of such action has been duly registered under the Registration of Documents Ordinance as an instrument affecting the land to which the action relates, and that such registration has been effected in or in continuation of the folio in which the mortgage bond sued upon in the action was registered ;

Registration of address for service of documents.

6. (1) Application for the registration of an address for the service of legal documents shall be made substantially in the form set out in the First Schedule to this Act.

(b) certifying that the register maintained under the Registration of Documents Ordinance or a certified extract therefrom, and all relevant entries in such register, have been personally inspected by such attorney-at-law or by any other specified attorney-at-law, at or after the time if the entry in the register of the *lis pendens* of the action ; and

(2) The address for service shall be registered in or in continuation of the folio in which is registered the mortgage of the land in respect of which the applicant has an interest :

Provided, however, that where such mortgage includes more than one land, it shall be sufficient if the address of the applicant is registered in the folio relating to the land in which he has an interest.

(c) containing a -statement of the name and registered address of every person, if any, found upon such inspection to be a person entitled to notice of the action.

(3) Where the applicant declares in his application that a previously registered address is cancelled, the Registrar shall

ISSUE OF NOTICE OF HYPOTHECARY
ACTION. ADDITION OF PARTIES,
INTERVENTION, &C.

Notice of
hypothecary
action.

9. (1) Notice of a hypothecary action shall, upon an order being made for the issue of summons on the defendants in the action, be issued to every person who is stated in the declaration filed under section 8 to be a person entitled to notice of such action, but who has not been joined as a defendant to the action.

(2) Where notice is not issued under subsection (1) to any person entitled to such notice, any party to the action may thereafter, but before the sale of the mortgaged land in execution of a hypothecary decree, apply to the court for the issue of notice of the action to such person, (whether or not his name was mentioned in the declaration filed under section 8), and notice shall be issued accordingly.

Manner of
issue of
notice.

10. (1) Notice of a hypothecary action may be issued to a person entitled to notice of such action in the manner provided in paragraph (a) hereunder or in the manner provided in paragraph (A) hereunder, at the option of the plaintiff:—

(a) (i) The Registrar of the court shall send to that person by registered post to his registered address a notice in the prescribed form; it shall be the duty of the Registrar to make an entry that the notice was sent in the journal of the proceedings in the action, and to file in such journal the receipt issued by the post office in respect of such notice ; and such entry and receipt shall be taken as conclusive proof, in the absence of fraud that the notice was duly sent;

(ii) A copy of such notice shall, within the period of two weeks from the date of the posting of the notice under sub-paragraph (i), be affixed in a conspicuous position upon the mortgaged land by the Fiscal under a precept from the court ;

(iii) A copy of such notice shall be published in a newspaper specified by the court ;

(b) The notice of action may be served in any manner provided by the Civil Procedure Code for the service of summons.

(2) The notice referred to in sub-paragraphs (i) and (ii) of paragraph (a) of subsection (!) shall be in both Sinhala and Tamil or in Sinhala only as the court may direct.

11. (1) Where the plaintiff in a hypothecary action joins as a defendant any person entitled to notice of the action, the provisions of section 10 shall apply in relation to the service on such person of the summons in the action in like manner as they apply in relation to the issue of notice of the action.

Manner of
issue of
process. &c.,
where person
entitled to
notice is a
party to the
action.

(2) Where any person entitled to notice of a hypothecary action is added as a party to the action, the provisions of section 10 shall apply in relation to the service on such person of any notice, process, order, decree or other document or written communication, in like manner as they apply in relation to the issue of notice of the action.

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

a) such person shall be entitled at his option to be added as a party to the action upon application made to the court in that behalf within one month of the date of the posting of the notice to him under section 10 (1) (a) or of the publication of a copy thereof under that section, whichever is the later, or where the notice is served in like manner as a summons, within one month of the date of such service ;

(b) such person may, in the discretion of the court upon such terms as the court thinks just, be added as a party to the action upon application

made after the expiry of the period of one month referred to in paragraph (a) but before the sale of the land under the hypothecary decree :

Provided, however, that every finding, order, decree or thing done in the action prior to the date of the application under paragraph (b) shall, unless the court in its discretion otherwise orders, bind the person so added in like manner as though he had previously been a party to the action.

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

13. Any person entitled to notice of a hypothecary action to whom such notice has not been issued under section 9 and in the manner provided by section 10 shall be entitled, on application made by him to the court at any time before the sale of the mortgaged land in execution of a hypothecary decree, to be added as a party to the action.

Rights of person added during pendency of action.

14. Where any person, to whom notice of a hypothecary action has been issued under subsection (2) of section 9 and in the manner provided by section 10, is added as a party to the action under paragraph (a) of section 12, or any person entitled to notice of a hypothecary action is added as a party under section 13—

- (a) no finding, order, decree or proceeding previously made or taken in the action shall bind him except in so far as he may consent to be bound thereby ;
- (b) such person shall be entitled to raise any question or issue which he could have raised if he had originally been a party to the action, and any other party may raise any question or issue arising in consequence ;
- (c) a fresh trial shall be had on every issue previously raised in the action, unless such person consents to be bound by the previous finding thereon;
- (d) upon the trial of any issue whether* previously raised or not, no part of the evidence previously taken shall be evidence upon that issue, except in so far as all the parties to the action agree to be bound by such evidence ;

(e) if a decree had been entered in the action prior to the addition of such person as a party thereto, the court shall, if such person so requires, make order suspending the operation of such decree, and shall, after the trial of all the issues as hereinbefore provided, confirm the judgment previously given and the decree entered thereon or annul such judgment and decree and give a new judgment and enter a new decree, as the circumstances of the case may require.

15. Every party to a hypothecary action, and every person entitled to notice of the action and to whom notice of the action is issued under section 9 and in the manner provided by section 10, and every person who is added as a party under section 12 or section 13, shall be bound by the decree and sale in the hypothecary action.

Persons noticed or added to be bound by decree and sale.

16. Every person having any interest in the mortgaged land by virtue of an instrument to which the mortgage in suit has priority, but who is not a person entitled to notice of the action as hereinbefore defined, shall be bound by every order, decree or sale or thing done in the hypothecary action:

Intervention by person interested who is not entitled to notice.

Provided, however, that any such person may at any time before the entry of the decree in the action be added as a party on application made by him in that behalf upon such terms as the court may impose, but any person so added shall be bound by every finding or order previously made in the action and by the proceedings previously taken therein except in so far as the court may in its discretion otherwise order.

-17. In sections 18 to 23," party omitted from a hypothecary action " means a person entitled to notice of the hypothecary action but who is not declared by section 15 to be bound by the decree and sale in that action.

Meaning of party omitted".

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

18. (1) A party omitted from a hypothecary action may at his option intervene in the action after the sale of the mortgaged land in execution of a hypothecary decree, but before the distribution of the proceeds of the sale, for the purpose of raising an issue as to the sum due under the mortgage in suit in the hypothecary action, and the court shall, if it finds after inquiry and hearing such evidence as may be adduced upon such issue, that the sum actually due is less than the sum stated in the decree to be due under the mortgage, amend the decree in so far as it relates to the sum found to be due under the mortgage.

(2) The raising of any issue or the amendment of any decree under subsection (1) shall not in any way affect the validity of the sale in execution of the hypothecary decree.

(3) A party omitted from a hypothecary action who intervenes in that action under subsection (1) shall, whether or not he makes a claim under section 57 to participate in the balance proceeds of sale of the mortgaged land, be bound by the sale in that action and by the decree (whether or not it is amended under that subsection) in like manner as though he had been a party to the action.

(4) Where a party omitted from a hypothecary action makes a claim under section 57 to participate in the balance of the proceeds of sale of the mortgaged land, then, notwithstanding that he may not have intervened in the action under subsection (1) of this section, he shall be bound by the decree and sale in the action in like manner as though he had been a party thereto.

Action by or against party omitted for settlement of rights. &c.

19. (1) Where a party omitted from a hypothecary action is not a person who is by subsection (3) or subsection (4) of section 18 declared to be bound by the decree and sale in that action, and a conveyance of the mortgaged land has been executed in favour of the person who had purchased that land at the sale (hereinafter referred to as " the prior sale ") in execution of the hypothecary decree in that action—

- (a) the party omitted may institute an action, to which the mortgagor and the purchaser at the prior sale shall be added as parties, for the purpose of obtaining a decree declaring him

to be entitled to the land or to any interest therein, or where such party omitted is a mortgagee, for the purpose of obtaining a hypothecary decree in respect of the land ;

- (b) the purchaser of the land at the prior sale may institute an action to which the mortgagor and the party omitted shall, be added as parties, for the settlement of the rights and liabilities of the purchaser, the mortgagor and the party omitted.

(2) In this section and in sections 20 to 23, " purchaser at the prior sale " includes any person deriving title under or from the person who purchased the land at the prior sale.

(3) The court may, if it thinks fit so to do having regard to the circumstances of any case, permit the party omitted to institute an action under subsection (1), notwithstanding that a conveyance of the mortgaged land may not have been executed in favour of the purchaser of the land.

20. In any action instituted under section 19, the party omitted from the hypothecary action may raise any issue as to the moneys due under any mortgage, which had priority over the interest of the party omitted and which was wholly or partly paid off out of the proceeds of the prior sale. Where such issue is raised, the mortgagee under that mortgage shall be added as a party to the action instituted under section 19 and the court shall determine afresh the sum actually due thereunder.

Issue may be raised as to amount properly due under mortgages paid off out of proceeds of prior sale.

21. (1) Where the court, in any action instituted under section 19, finds that any moneys are due from the mortgagor to the party omitted by virtue of the instrument under which he claims, the court shall enter a decree ordering that the land sold at the prior sale shall be resold, unless the purchaser at the prior sale pays to the party omitted, before a date specified in the decree, the moneys so found to be due to the party omitted from the mortgagor.

Procedure where court finds that moneys are due to party omitted from mortgagor.

(2) Upon the resale of the mortgaged land under the decree entered under subsection (1), the proceeds of resale shall be distributed as follows;—

- (i) firstly, the purchaser at the prior sale shall be entitled to payment of the amount at which he purchased the

land at the prior sale, or of the total amount of the moneys paid off out of such purchase money to every mortgagee under a mortgage which had priority over the interest of the party omitted, whichever amount is the less:

Provided, however, that where the court has under section 20 determined the amount of the moneys due under any such mortgage, and the amount so determined is less than the moneys actually paid off thereon in the prior action, the amount so determined shall be taken, for the purposes of the preceding provisions of this paragraph, to be the moneys due under that mortgage ;

- (ii) secondly, after payment of any amount to which the purchaser is entitled under paragraph (i), the party omitted shall be entitled to payment of the amount found under subsection (1) to be due to him from the mortgagor;
- (iii) thirdly, the purchaser at the prior sale shall be entitled to any balance remaining after the payments referred to in sub-paragraphs (i) and (ii), have been made.

(3) Where any moneys are paid to the party omitted by the purchaser at the prior sale in compliance with the decree under subsection (1) or any moneys are paid to the party omitted under paragraph (ii) of subsection (2), the following provisions shall apply :—

- (a) If the mortgage was created before the appointed date, the purchaser of the land at the prior sale shall be entitled, in the action instituted under section 19, to an order directing the mortgagor to pay to such purchaser an amount equal to the amount so paid to the party omitted ;
- (b) If the mortgage was created after the appointed date, then, if, but only if, any amount had in the prior hypothecary action been paid*to the mortgagor out of the proceeds of sale of the mortgaged land at the prior sale, the purchaser at such prior sale shall be entitled, in the action instituted under section 19, to an order directing the mortgagor to pay

to such purchaser an amount equal to the moneys actually so paid to the party omitted under this section or to the moneys paid to the mortgagor out of the proceeds of the prior sale, whichever amount is the less. •

(4) Any order made under subsection (3) may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

22. (1) Where the court is satisfied that the instrument, under which the party omitted from the hypothecary action claims an interest in the land, transferred to him the title of the mortgagor to the land, but that such title was subject to the mortgage in suit in the prior hypothecary action, the court shall enter decree declaring the party omitted to be entitled to the land subject to the right of the purchaser at the prior sale to a hypothecary charge to the extent of the amount at which he purchased the land at the prior sale or of the total amount of the moneys paid off out of such purchase money to every mortgagee under a mortgage which had priority over the interest of the party omitted, whichever amount is less, and ordering that in default of the payment of such amount to the purchaser by the party omitted the land shall be sold against the party omitted for the recovery of such amount:

Provisions applicable where part omitted is a transferee

Provided, however, that where the court has under section 20 determined the amount of the moneys due under any such mortgage, and the amount so determined is less than the sum actually paid off thereon out of the proceeds of the prior sale, the amount so determined shall be taken, for the purposes of the preceding provisions of this subsection, to be the moneys due under that mortgage.

(2) In any case to which subsection (1) of this section applies the court shall, if satisfied that any moneys were paid to the mortgagor out of the proceeds of the prior sale, make order directing the mortgagor to pay to the purchaser at the prior sale an amount equal to the moneys so paid to the mortgagor out of those proceeds, and such order may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

Order against prior mortgagee if over-payment was made from proceeds of prior sale.

23. (1) In any case where, by reason that the amount of the moneys determined by the court under section 20 to be due on any mortgage is less than the amount of the moneys actually paid off on that mortgage out of the proceeds of the prior sale, there has been an over-payment to the mortgagee under that mortgage (hereinafter referred to in this section as "the prior mortgagee"), the following provisions shall apply :—

- (a) If no moneys are paid to the party omitted under section 21 (1) in compliance with the decree entered thereunder or under paragraph (ii) of section 21 (2) out of the proceeds of the resale, the party omitted shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to him the amount found under section 21 (1) to be due to him from the mortgagor or the amount of such over-payment, whichever amount is less;
- (b) If any moneys are paid to the party omitted under section 21 (1) in compliance with the decree entered thereunder or under paragraph (ii) of section 21 (2) out of the proceeds of the resale—
 - (i) the purchaser at the prior sale shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to such purchaser the amount of the moneys so paid to the party omitted or the amount of such over-payment, whichever amount is less;
 - (ii) if the moneys so paid to the party omitted are less than the amount found under section 21 (1) to be due to him from the mortgagor, the party omitted shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to him the amount of the deficiency :

Provided, however, that no order shall be made under this sub-paragraph against the prior mortgagee unless, and except to the extent to which, the amount of the over-payment exceeds the amount specified in the order made against the prior mortgagee under sub-paragraph (i) of this paragraph ;

- (c) if the party omitted is a transferee, and the provisions of section 22 are accordingly applicable, the purchaser at the prior sale shall, in the action instituted under section 19, be entitled to an order directing the prior mortgagee to pay to him the amount of such over-payment.
- (2) Any order made under subsection (1) may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

EFFECT OF SALE IN EXECUTION OF DECREE UPON PUISNE MORTGAGE

24. In section 25—

" prior mortgage ", in relation to any other mortgage of the same land, means a mortgage which has priority over such other mortgage; and " prior mortgagee " has a corresponding meaning;

Meaning of " prior mortgage ", " puisne mortgage ", &c.

" puisne mortgage ", in relation to any other mortgage of the same land, means a mortgage over which such other mortgage has priority; and " puisne mortgagee " has a corresponding meaning.

25. Where any mortgaged land is sold in execution of a decree in a hypothecary action upon a puisne mortgage, and the conveyance of the mortgaged land is executed in favour of the purchaser at such sale (hereinafter in this section referred to as " the purchaser under the puisne mortgage "), the following provisions shall apply :—

Effect of conveyance upon sale under puisne mortgage.

- (a) The puisne mortgagee, and every person who being entitled to notice of the action upon the puisne mortgage is by virtue of any of the

preceding provisions of this Part bound by the decree and sale in that action, shall not be entitled to notice of any hypothecary action instituted subsequent to the date of such conveyance on any prior mortgage of that land, but shall be bound by the decree and sale in the latter action;

- (b) The purchaser under the puisne mortgage shall, if the mortgaged land is subsequently sold in execution of the decree in any hypothecary action upon a prior mortgage, be entitled upon making a claim in that behalf under section 57, to the entirety of the balance of the proceeds of the sale of the land remaining after satisfaction of the moneys found to be due in that action to the prior mortgagee and of the claim, if any, of any other person preferred by virtue of any other instrument having priority to the puisne mortgage;
- (c) If the purchaser under the puisne mortgage is a person entitled to notice of a subsequent hypothecary action upon a prior mortgage of the land but is a party omitted from the latter action, and if an action is instituted under section 19, then, for the purposes of the application of the provisions of subsection (1) of section 22, no mortgage shall be deemed to have priority over the interest of such party omitted unless it had priority over the puisne mortgage in suit in the action in which the land was sold to such purchaser;
- (d) if the conveyance to the purchaser under the puisne mortgage was executed after the date of the registration of the *lis pendens* of a hypothecary action upon a prior mortgage of the land, and if the puisne mortgagee under the mortgage in suit in the action in which such purchaser purchased the mortgaged land is a party omitted from the subsequent hypothecary action, then such purchaser, unless he is added as a party to the latter action under section 16 or makes a claim under section 57 in, the latter

action, shall be deemed to be a party omitted from the latter action and the provisions of paragraph (c) of this section shall be applicable;

- (e) Except in the cases referred to in paragraphs (c) and (d) of this section, the purchaser under the puisne mortgage shall, whether or not he is a party to any hypothecary action upon any prior mortgage of the mortgaged land, be bound by the decree and sale in the latter action.

DEATH. INSOLVENCY OR DISABILITY OF MORTGAGOR OR PERSON ENTITLED TO NOTICE

26. (1) Where any mortgagor dies before the institution of a hypothecary action in respect of the mortgaged land, or any mortgagor or any person who is or becomes a party to a hypothecary action dies after the institution of the action, and grant of probate of the will or issue of letters of administration to the estate of the deceased has not been made, the court in which the action is to be or has been instituted may in its discretion, after the service of notice on such persons, if any, and after such inquiry as the court may consider necessary, make order appointing a person to represent the estate of the deceased for the purpose of the hypothecary action, and such person may be made or added as a party to the action :

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

Provided, however, that such order may be made only if—

- (a) the value of the mortgaged property [§4,24 of 1969,] does not exceed twenty thousand rupees; or
- (b) a period of six months has elapsed after the date of the death of the deceased ; or
- (c) the court is satisfied that delay in the institution of the action would render the action not maintainable by reason of the provisions of the Prescription Ordinance.

(2) In making any appointment under subsection (1) the court shall appoint as representative a person who after summary inquiry appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued ;

Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the court shall make such an appointment (whether of one of those persons or of any other person) as would in the opinion of the court be in the interests of the estate of the deceased.

Effect of representative being made a party.

27. Where any appointment is made under section 26 and the person so appointed is a party to the action, every order, decree and sale or thing done in the hypothecary action (including the seizure and sale in execution of the property of the deceased mortgagor not included in the mortgage in suit) shall have the like effect as though the executor or administrator of the deceased were a party to the action.

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

28. (1) The duly appointed executor of the will or the administrator of the estate of a deceased person, or the duly appointed assignee of the estate of an insolvent, or the duly appointed curator or manager of the estate of a minor or person of unsound mind, may, whether or not such deceased person, insolvent, minor or person of unsound mind has himself registered his address under section 6, register an address under that section on behalf of such estate.

(2) Where the registration of the address of the executor or administrator or of the assignee, curator or manager, as the case may be, is not effected as provided in subsection (1), any other person interested may register an address under section 6 on behalf of the estate of the deceased person or of the insolvent, minor or person of unsound mind. The address so registered shall be cancelled forthwith upon the registration of an address under subsection (1) on behalf of such estate.

(3) Where notice of a hypothecary action is issued under section 9 and in manner provided by section 10—

- (a) to any executor or administrator or to any assignee, curator or manager who has registered an address as provided in subsection (1) ; or

- (b) to any other person who has registered an address as provided in subsection (2) and whose address is for the time being registered, and if the deceased person, insolvent, minor or person of unsound mind had himself registered an address under section 6, to the address registered by him,

notice of the hypothecary action shall be deemed to have been duly issued for the purpose of binding the estate of such deceased person, insolvent, minor or person of unsound mind.

(4) In any case referred to in paragraph (b) of subsection (3), any person to whom notice of the hypothecary action is issued or any other person may, within one month of the date of the posting of the notice or of the publication thereof, whichever is the later, or where the notice is served in like manner as a summons, within one month of the date of such service, make application to the court for the appointment of some person to represent the estate of the deceased or of the insolvent, minor or person of unsound mind as the case may be, and the court shall appoint a person accordingly.

In making such appointment the court shall appoint as representative a person who after summary inquiry appears to court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued, or who would ordinarily be appointed to be the curator, assignee or manager of the estate, as the case may be :

Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the court shall appoint as representative such of those persons or such other person, whose appointment in the opinion of the court will be in the interests of the estate.

Where the court is satisfied that proceedings are pending for the appointment of an executor, administrator, assignee, curator or manager, the court may on that ground postpone the appointment of a representative for any period not exceeding three months.

29. (1) Where notice of a hypothecary action is issued under section 9 and in manner provided by section 10 to the registered address of a person entitled to notice of the action, then, notwithstanding

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

that such person may be or may have been dead or an insolvent or a minor or person of unsound mind at the time of the issue of the notice, the estate of such person shall be bound by every order, decree or sale or thing done in the hypothecary action whether or not application is made under subsection (4) of section 28 for the appointment of a representative, unless the executor or administrator or assignee, curator or manager or any other person had registered an address on behalf of the estate under subsection (1) or subsection (2) of that section.

(2) In any case where notice of a hypothecary action is in manner provided in section 10 issued to an executor, administrator, curator, assignee or manager who has registered his address as provided in subsection (1) of section 28, then, notwithstanding such death, insolvency, minority or unsoundness of mind, the estate shall be bound by every order, decree or sale or thing done in the hypothecary action, whether or not such executor, administrator, assignee, curator or manager becomes a party to the action.

(3) Where—

(a) notice of a hypothecary action is issued under section 9 and in manner provided by section 10 to any person who has registered an address under subsection (2) of section 28 on behalf of the estate of a deceased person or insolvent or person of unsound mind or minor ; and

(b) if the deceased person, insolvent, person of unsound mind or minor had himself registered an address, such notice is issued to that address,

then, notwithstanding the death, insolvency, minority, or unsoundness of mind, the estate shall be bound by every order, decree or sale or thing done in the hypothecary action, whether or not a representative is appointed under subsection (4) of section 28 and becomes a party to the action,

30. Where any person having any interest in a mortgaged land, to which the mortgage in suit has priority, has not registered an address under section 6, and no other person registers an address on his behalf or on behalf of his estate as provided

in subsection (1) or subsection (2) of section 28, then, notwithstanding that the person having such interest may be dead or an insolvent, minor, or person of unsound mind at the time of the institution of the hypothecary action, the estate of such person shall be bound by every order, decree or sale or thing done in the hypothecary action.

31. (1) The provisions of sections 28 to 30 shall not apply in the case of any action instituted for the enforcement of a mortgage created before the appointed date.

Special provision for actions on mortgages created before the appointed date.

(2) Where a hypothecary action is instituted for the enforcement of a mortgage created before the appointed date, and the court is satisfied that any person entitled to notice of the action is or was dead or an insolvent, minor or person of unsound mind before or at the time of the issue to him of notice of the action, the person to whom probate of the will or letters of administration to the estate of the deceased is granted, or, as the case may be, the duly appointed assignee or curator or manager shall be added as a party to the action upon application made to the court in that behalf whether by such person or by any party to the action :

Provided, however, that it shall be lawful for the court in the circumstances and subject to the conditions set out in section 26 to appoint a representative of the deceased for the purpose of the hypothecary action, and in any such case the representative so appointed may be added as a party to the action in lieu of the executor or administrator.

(3) Where the executor or administrator or the duly appointed representative of a deceased person, or, as the case may be, the assignee, curator, or manager of the estate of the insolvent, minor, or person of unsound mind is not added as a party under subsection (2), the executor or administrator or, as the case may be, the assignee, curator or manager shall—

(a) be entitled upon making a claim in that behalf under section 57 to participate in the proceeds of sale remaining after satisfaction of the amount decreed to be due upon the mortgage in suit in the action ; or

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

(b) if he does not so participate, be deemed to be a party omitted for the purpose of enabling an action to be brought by or against him under section 19 and if such an action is brought the provisions of sections 20 to 23 shall apply accordingly.

Death, insolvency or unsoundness of mind of mortgagor after entry of decree.

32. Where any mortgagor dies or is adjudged an insolvent or a person of unsound mind at any time after the entry of decree in a hypothecary action and before the sale of the mortgaged land under the decree, no proceedings for the execution or enforcement of the decree shall be taken, or if taken shall be of any effect, unless the duly appointed executor of the will or administrator of the estate of the deceased or a representative appointed under section 26, or, as the case may be, the assignee or manager of the estate of the insolvent or person of unsound mind, is made a party to the action.

POWER OF PLAINTIFF TO JOIN CLAIMANTS ADVERSE TO MORTGAGOR OR TO APPLY FOR DECLARATION AS TO POSSESSION OF LAND IN THE EVENT OF SALE

Power of plaintiff to join claimant adverse to mortgagor.

33. (1) The plaintiff in a hypothecary action may at his option join as a party to the action any person alleged by the plaintiff to claim any right to ownership or possession of the mortgaged land by title adverse to that of the mortgagor.

(2) Where any person is so joined as a party to the action, such person or any other party may raise any issue upon any question relating to the right of ownership or possession of the land ; and in any such case the court shall, after hearing such evidence as may be adduced by any party to the action, make an adjudication upon the issue so raised.

(3) Where the adjudication of the court upon any issue raised as hereinbefore provided is to the effect that the mortgagor is not entitled to the land or any part or share thereof, no decree shall be entered in the action for the sale of the land or such part or share thereof, as the case may be.

(4) Where any person is joined as a party to the action under subsection (1), every adjudication by the court on any question relating to the title of the land or to the right of possession thereof shall be *res adjudicata* as between all parties to the action including the party so added.

34. (1) Upon the institution of a hypothecary action in respect of any land, the plaintiff may at his option, at any time after the registration of the *lis pendens* of the action and before the issue of a precept or order for the service of summons, make application to the court for a declaration. that, in the event of decree being entered for the sale of the land the court will order the removal from the land of all persons whomsoever who may resist the delivery of possession to the purchaser at the sale.

provision for declaration by court as to removal from land of persons claiming adversely to mortgagor.

No such application shall be entertained by the court unless it is accompanied by a plan of the land.

(2) Upon such application being made, the court shall direct—

(a) that notices of the application shall be published in two separate issues of each of two newspapers specified by the court ;

(b) that such notices shall be posted by the Fiscal under a precept from court in at least three conspicuous places on the land, and that similar notices shall be posted at the District Court, Magistrate's Court and Primary Court if any, having jurisdiction in the area in which the land is situated, at the kachcheri of the district in which the land is situated, and at such other places as the court may think fit ;

(c) that notice of the action shall be published by beat of tom-tom in the vicinity of the land on two specified dates in the presence of a Fiscal's officer or grama seva niladhari or other officer specified by the court.

(3) Every notice under subsection (2) shall contain a statement to the effect that a plan of the land has been filed in the court and will be available for inspection by any person interested.

(4) For the purposes of paragraph (a) of subsection (2), the court shall direct publication in two newspapers which appear to the court to be the most appropriate for the purpose of conveying information of the action to the residents of the area in which the land is situated.

(5) The notices required to be posted by paragraphs (b) and (c) of subsection (2) shall be posted either before the date of the last publication of the notice under paragraph (a) of subsection (2) or not later than two weeks after that date.

is not entitled to the land or to any part or share thereof, the court shall make order dismissing the hypothecary action in so far as it relates to the land or such part or share.

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

35. (1) Where notices have been published and posted as provided in section 34, any person claiming to be entitled to possession of the land or of any part or share thereof under any right or title adverse to that of the mortgagor shall be entitled, on application made to the court in that behalf at any time within two months of the date of the last publication of the notice under paragraph (a) of section 34 (2), to be added as a party to the action for the purpose of securing an adjudication by the court upon his claim.

(3) Where the adjudication of the court upon any such issue is that any party added under section 35 is entitled to possession of the land or any part thereof and that the mortgage in suit in the action is subject to the rights of such person, no declaration shall be made under subsection (1) of this section in respect of the land or that part thereof, as the case may be.

(2) Where any person is added as a party under subsection (1), such person or any other party may raise any issue (including an issue on a question of title) relevant to the claim to possession of the land and in any such case the court shall, after hearing such evidence as may be adduced by any party to the action, make an adjudication upon the issue so raised.

(4) Where any person is added as a party to the action under section 35, every adjudication by the court upon any question relating to the title to the land or to the right to possession thereof shall be *res adjudicata* as between all the parties to the action including the parties so added.

Order of court upon application under section 35.

36. (1) Where no person makes application to be added as a party under section 35, or where the court is satisfied that none of the persons so added is entitled to possession of the land, the court shall make the declaration for which application was made by the plaintiff under subsection (1) of section 35 :

(5) The making of a declaration under this section, or the removal from the land of any person in pursuance of the order made under section 55 in terms of such declaration—

- (a) shall not affect or prejudice the right of any person (other than (i) a person declared by the preceding sections of this Act to be bound by the decree, or (ii) a person added as a party under this section) to institute proceedings for the recovery of possession of the land from the purchaser or for declaration of title thereto ; and
- (b) shall not operate as *res adjudicata* in such proceedings upon any question as to the right to possession or ownership of the land.

Provided, however, that where any person appears before the court at any time within the period of two months specified in subsection (1) of section 35, and satisfies the court—

- (a) that he was placed in charge of the land by a person who is absent from Sri Lanka ; and
- (b) that there is no duly appointed attorney in Sri Lanka of such last-mentioned person,

the court shall not make such declaration.

(2) Where the adjudication of the court upon any issue raised as hereinbefore provided is to the effect that the mortgagor

Such application shall be supported by affidavit of the plaintiff stating the sum lent to the mortgagor, the sum, if any, repaid

APPOINTMENT OF RECEIVER OF MORTGAGED LAND

37. (1) The plaintiff in a hypothecary action may, at any time after the registration of the *lis pendens* of the action, make application to the court by petition for the appointment of a receiver of the land which is the subject of the action.

Application for appointment of receiver of mortgaged land.

out of the loan, the sums due to the mortgagee by way of principal and interest, and the current market value of the mortgaged land.

(2) Subject as hereinafter provided, the application for the appointment of a receiver shall, unless the plaintiff otherwise desires, be dealt with *ex parte* by the court :

Provided, however, that where the application is made at any time after the filing, of an answer by the mortgagor, the application shall be dealt with after notice to the mortgagor.

(3) This section and sections 38 to 45 shall not apply to any action upon a mortgage created before the appointed date.

Cases where court may refuse to appoint receiver.

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

- (a) if, having regard to the situation, nature and value of the land and the amount which in the circumstances of the case can reasonably be allowed as remuneration to a receiver, the court is of opinion that a suitable person is not available for such appointment;
- (b) if it appears to the court that the amount claimed by the plaintiff to be due on the mortgage, less such amount, if any, as may have been brought into court by the mortgagor is not more than one-half of the current market value of the land;

(2) Save as provided in subsection (1), the court shall not refuse to make an order for the appointment of a receiver upon application duly made in that behalf.

Notwithstanding anything in subsection (1), the court shall not refuse to make an order for the appointment of a receiver in any case where the court is satisfied that the mortgagor or other person in possession of the mortgaged land has committed any act of waste in respect of the land and that the appointment of a receiver is necessary for the purpose of the prevention of such acts.

39. (1) The court may cancel the appointment of a receiver— Cancellation of appointment.

- (a) at the instance of the plaintiff; or
- (b) where the appointment had been made without notice to the mortgagor, if it is subsequently shown to the satisfaction of the court that the amount claimed by the plaintiff to be due on the mortgage, less such amount if any as may have been brought into court by the mortgagor, is not more than one-half of the current market value of the land ; or
- (c) if the court considers such cancellation expedient owing to any default or negligence on the part of the receiver, or if the court is satisfied that the amount of the remuneration allowed to the receiver is excessive and that he is unwilling to accept as remuneration the amount which the court, after hearing the mortgagor, considers to be reasonable ; or
- (d) at the instance of the receiver, if he is unwilling to continue in his appointment as such.

(2) Where the appointment of a receiver is cancelled under paragraph (c) or paragraph (d) of subsection (1), the court may, if the plaintiff so desires, make a new appointment of a receiver.

40. (1) Every order for the appointment of a receiver shall— Order for appointment, &c.

- (a) provide for the committal of the land to the custody and management of the receiver ;
- (b) fix the amount of the remuneration to be payable to the receiver, whether specifically or by reference to a specified percentage of the amount of the rents and profits derived from the land.

(2) The court may, if it considers it necessary so to do, require the receiver to give such security as the court may consider adequate.

(3) Where the receiver is obstructed by any person in taking custody of the land, the court may, after considering such representations as may be made by such person, by order direct the removal of such person from the land.

the court may, after considering how far it is necessary to keep in court the amount of the rents and profits or any part thereof for the purpose of securing that the land and the amount so kept will provide adequate security for the payment of the amount claimed by the plaintiff to be due to him, direct the payment to the mortgagor, out of the balance so remaining, of a monthly allowance sufficient to meet such expenses of the mortgagor.

Rights and powers of receiver.

- 41. (1) The person appointed under this Part to be the receiver of any land shall have and may exercise all the rights and powers of the owner of the land for the management, protection, and preservation of the land and the collection of the rents and profits thereof.

(2) Any directions given under subsection (1) may be varied or revoked by the court on application made by the plaintiff or the mortgagor.

(2) The court may on application made by the receiver or any party to the action—

- (a) give such directions as it may consider necessary relating to the exercise of the rights and powers conferred by subsection (1) ;
- (b) by order authorize the receiver to institute or defend any action or proceedings in respect of any matter affecting the land or the administration or management thereof.

44. (1) AH moneys paid into court by the receiver shall, unless the court otherwise directs, be kept in court to the credit of the action until the final disposal thereof :

Nett profits to be kept in court.

Provided that payment may from time to time be made, out of such moneys, of the remuneration due to the receiver, or of such amounts as may be directed under section 43 to be paid to the mortgagor, or of such amounts as may from time to time be ordered by the court to be paid to the receiver for the purposes of the management of the land.

Duties and liabilities of receiver.

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

- (a) render accounts to the court in such form and at such times as the court may direct in that behalf ;
- (b) make payment into court to the credit of the action, from time to time as the court may direct, of the nett rents and profits of the land ;
- (c) be responsible for any damage to the land, or for any loss of income, incurred by his gross negligence or by any intentional act of omission on his part.

(2) The amount of the moneys in court shall be applied in satisfaction of the sums if any for which decree is entered in the action.

(3) No seizure of such moneys in execution of any order or decree in any other action shall affect the operation of subsection (2) of this section.

45. No appeal shall lie against the refusal of the court to make any order for the appointment of a receiver or against any order appointing a receiver or against any other order or directions made or given under any of the provisions of sections 37 to 43, other than an order made under subsection (3) of section 40.

Restriction of appeals against orders under sections 37 to 43.

Payment of subsistence allowance to mortgagor.

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

- (a) that the income, if any, derived by the mortgagor from sources other than the land is insufficient to enable the mortgagor to meet the expenses necessary for the subsistence of himself and his dependants, and
- (b) that any balance remains out of the nett rents and profits of the land after payment therefrom of the remuneration of the receiver,

SALE UNDER HYPOTHECARY DECREE

46. No decree in any hypothecary action upon any mortgage of land which is created after the appointed date and no decree in any action for the recovery of any moneys due upon any such mortgage, shall order any property whatsoever, other than the mortgaged land, to be sold for the recovery

Property liable to sale in execution of decree.

of any moneys found to be due under the mortgage, and no property whatsoever, other than the mortgaged land, shall be sold or be liable to be sold in execution of any such decree.

In this section "action for the recovery of moneys due upon a mortgage" includes any action for the recovery of any debt secured by a mortgage whether the cause of action sued upon arises by reason of the mortgage or otherwise.

Operation of section 46.

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

Order for sale in decree, &c.

48. (1) Where in a hypothecary action the court finds that the mortgage ought to be enforced, the decree shall, in relation to the mortgaged land, order that the land shall be sold in default of payment, within a period of two months from the date of the decree, of the moneys due under the mortgage :

Provided, however, that the court may, in its discretion and subject to such conditions including the making of specified payments on specified dates as it thinks fit, on application made in that behalf before the entry of the decree and after consideration of the circumstances of both the mortgagor and mortgagee, fix, in lieu of the aforesaid period of two months, such longer period as the court may consider reasonable.

(2) In issuing the commission for the sale of the mortgaged land the court shall specify the amount due under the decree at the time of the issue of the commission and the amount so specified shall be mentioned in the advertisement of the sale.

Where the sale is stayed or adjourned and a subsequent advertisement is necessary, the court shall on application made by the plaintiff and upon his certifying that any part payment has been made of the amount due under the decree, give notice to the Fiscal or auctioneer of the amount due under the decree at the time of such application, and in such event the amount so notified shall be mentioned in the subsequent advertisement.

49. Subject as hereinafter provided, where the plaintiff desires that the land shall be seized prior to the sale, the court may order that the land shall be seized by the Fiscal under section 237 of the Civil Procedure Code and where the land is so seized the provisions of the Civil Procedure Code relating to the seizure, sale, confirmation of the sale, and conveyance and delivery of immovable property sold in execution of a decree for the payment of money shall apply accordingly and the provisions of sections 53 to 56 of this Act shall not apply :

Special provision for seizure and sale,

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

50. (1) Where no order is made under section 49 for the seizure of the land, the court may in the decree or subsequently give directions—

Directions and other provisions as to sale.

- (a) specifying the person by whom the land shall be sold ;
- (b) specifying the manner and time of the advertisement of the sale and the person by whom the conveyance to the purchaser is to be executed ;
- (c) prescribing the conditions of the sale ;
- (d) in relation to such other matters for which the court considers directions to be necessary.

(2) Where the plaintiff so desires the court may direct the land to be sold by the Fiscal, and in any such case the sale may be conducted on behalf of the Fiscal by the Deputy Fiscal or by any other person authorized in writing by the Fiscal.

(3) Any directions given under the preceding provisions of this section may be altered by subsequent directions of the court.

(4) Where no order is made under section 49 for the seizure of the land, the following provisions shall apply in relation to the sale ;—

- (a) The person conducting the sale shall put up the land for sale first at the current market value of the land as appraised by him, or if the appraised value is fixed by the court under section 51 (3) at such

appraised value, and if there be no bidders then at the amount mentioned as required by section 48 in the advertisement as the amount due under the decree and in the event of there being no bidders at such sale also, then immediately thereafter the land shall be put up for sale to the highest bidder :

Provided that where an order has been made under section 52 (1), the land shall not be sold at the first sale if the highest bid is less than the appraised value as fixed under section 51 (3) ;

- (b) If the judgment debtor or any other person on his behalf, at any time before the hour fixed for the sale, pays to the officer conducting the sale the full amount mentioned as required by section 48 in the advertisement as the amount due under the decree and also the charges incurred for advertisement and incidental to the sale of the land, the sale shall be stayed ;
- (c) In every case where a sale has taken place the person conducting the sale shall (i) not later than forty-eight hours after the time of the sale, deposit at the nearest kachcheri to the credit of the action the amount realized at the sale and forward the kachcheri receipt to the court by which the order to sell was issued, and (ii) in making the report required by section 282 of the Civil Procedure Code, specify the manner in which the sale has been held, the name of each bidder and each bid made by such bidder ;
- (d) Every person making a bid at the sale shall be bound by the conditions of sale prescribed by the court under the preceding provisions of this section whether or not he signs an agreement to be bound thereby ;
- (e) If the court finds that any sum is due in respect of the sale by reason of the operation of the conditions of sale from any person bound by such conditions, the court may make order directing the payment of such sum by such person to the credit of the action, and such order may be enforced in the same manner as an order or decree entered by the court in an ordinary action.

51. (1) The plaintiff in a hypothecary action shall not be entitled to bid for or purchase any mortgaged land sold in execution of the decree unless leave to bid and purchase is granted to him by the court.

Leave to plaintiff to bid and purchase.

(2) Every application by the plaintiff for leave to bid for and purchase any mortgaged land shall be accompanied by an appraisalment from the person directed to conduct the sale setting out the current market value of the land.

A copy of such appraisalment shall be sent by the Registrar by registered post to the registered attorney for the mortgagor or where no proxy has been filed shall be served on the mortgagor in like manner as a summons and copies shall be sent by registered post to every other party to the action who has registered an address under section 6 ; the mortgagor or any such party may within a period of fourteen days from the date of the service or posting of the copy make objection to the valuation set out therein.

(3) The court shall, after consideration of such objections, if any, as may be made under subsection (2), by order fix the amount which shall be taken, for the purposes of the succeeding provisions of this section, to be the appraised value of the land.

(4) Leave to the plaintiff to bid for and purchase any mortgaged land shall in every case be subject to the condition that the plaintiff shall not bid for or purchase the land except at or above the amount of the appraised value of the land as fixed under subsection (3) or the amount required by section 48 to be mentioned in the advertisement as the amount due under the decree, whichever such amount is the less.

(5) Where two or more lands are subject to the mortgage and one advertisement only is published in respect of the sale of such lands, it shall be the duty of the Fiscal or auctioneer to specify in the advertisement the order in which such lands will be sold, whether or not directions prescribing the order of sale are given under section 52.

(6) Where application is made under subsection (2) after the publication of the advertisement of the sale, and it is necessary in consequence of such application to alter the date of the sale and publish a fresh advertisement of the sale, the court may order that the costs of the postponement and of the fresh advertisement, shall be borne by the plaintiff.

(7) No appeal shall lie against any order made under this section.

Directions for second sale if highest bid is less than current market value.

52. (1) The court may in any hypothecary action on application made by the mortgagor and upon such terms as the court may think fit, direct that if the highest bid at the sale of any mortgaged land is less than the amount of the appraised value of the land as fixed under section 51 (3), the land shall not be sold at that sale, and that a second sale of the land shall be held.

Order of sale where more than one land is mortgaged.

(2) Where more than one land is subject to the mortgage in suit in the action, the court may upon application made by the mortgagor in that behalf, prescribe the order in which the lands shall be sold and may fix different dates for the sales of different lands.

Form of conveyance to purchaser.

53. The conveyance to the purchaser of any mortgaged land sold in execution of a hypothecary decree shall, except in a case to which section 49 applies, be in the form in the First Schedule to this Act :

Provided, however, that such form may in any case be varied or modified by the court in such manner as the court may consider necessary in the circumstances of the case.

Delivery of possession, &c.

54. In any case, other than a case in which a declaration has been made under section 36 or in which an order is made under section 49, the court shall on application made by the purchaser make an order for the delivery of possession to the purchaser or any other person on his behalf, and an order so made shall have the like effect and be enforced in the same manner as an order made under section 287 of the Civil Procedure Code in the case of a sale by the Fiscal under that Code.

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

55. (1) In any case where a declaration has been made under section 36, the court shall on application made by the purchaser order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the land, and if need be, by removing therefrom all persons whomsoever who may refuse to vacate the same.

(2) Where an order is made under subsection (1), and the Fiscal reports to the court that he was unable to put the purchaser or any other person on his behalf in possession of the land, the court shall direct the Fiscal to post in conspicuous places on the land a notice in the form set out in the First Schedule to this Act and to report to the court within seven days of the posting of such notice—

- (a) whether or not the purchaser or such other person was put in possession of the land ; and
- (b) whether he was obstructed in attempting to put the purchaser or such person in possession, and if so, the manner of such obstruction and the person or persons by whom such obstruction was caused.

(3) Where the court is satisfied upon the report of the Fiscal that any person whosoever refused to yield up possession at any time after the date of the posting of the notice referred to in subsection (2) or obstructed or resisted the Fiscal at any time after that date, the court may commit the person so refusing to yield up possession or causing such obstruction or resistance to jail for a term which may extend to thirty days, and direct the purchaser to be put into possession of the land.

(4) Where possession of the land is delivered to the purchaser and he is at any time within two months thereafter hindered or obstructed by any person in maintaining effective possession of the land, the court may commit the person causing such hindrance or obstruction to jail for a term which may extend to thirty days :

Provided, however, that nothing in the preceding provisions of this subsection shall affect or prejudice the right of the purchaser upon any such hindrance or obstruction being caused (whether within or after the period of two months aforesaid) to any remedy which may be claimed in that behalf under any written or other law.

9 (5) Nothing in sections 323 to 330 of the Civil Procedure Code shall apply in any case where an order for the delivery of possession to the purchaser or any other person on his behalf is made under this section.

Fiscal to prepare plan of the land of which possession is delivered.

56. Where delivery of possession of a mortgaged land has been made to the purchaser under section 54 or section 55, the Fiscal shall upon a request made in that behalf by the purchaser and the payment by the purchaser of the necessary expenses, cause a plan to be prepared of the land of which possession was delivered. The plan so prepared shall after being endorsed by the Fiscal with a certificate to the effect that it is a plan of the land of which possession was delivered be furnished to the purchaser.

Claims to balance proceeds of sale.

57. Where any land is sold in execution of a hypothecary decree in respect thereof, any person who claims any interest in the balance of the proceeds of sale remaining after satisfaction of the moneys due under the mortgage in suit in the action shall (whether or not he is a party to the action or a person entitled to a notice thereof) be entitled to establish such claim, and where such claim is established to participate in such balance proceeds.

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

58. (1) Where any land is sold in execution of a hypothecary decree in respect thereof—

- (a) any judgment-creditor claiming under a notice of seizure of the land which had been duly registered under the Registration of Documents Ordinance before the registration of the *lis pendens* of the hypothecary action shall, whether or not he has registered an address under section 6 of this Act, be entitled to make a claim under section 57 and to participate in the proceeds of sale remaining after satisfaction of the moneys due on the mortgage in suit in the hypothecary action ;

- (b) no person claiming under any seizure of the land effected or registered after the date of the registration of the *lis pendens* of the hypothecary action shall, by reason of such seizure, be entitled to participate in such balance proceeds, but nothing in this paragraph shall prejudice the right of such person after the sale of the land to seize the right, title and interest of the mortgagor in such balance proceeds.

(2) The rights of any person claiming under a notice of seizure to participate in the balance proceeds as provided in paragraph (a) of subsection (1), shall, as between himself and any other person claiming whether under a notice of seizure or any other instrument, have priority according to the time of registration :

Provided, however, that where two or more notices of seizure of any land are registered by different persons and no other person has any interest in the land by virtue of any other instrument registered between the dates of the registration of such notices of seizure, such different persons shall be entitled to claim a rateable distribution of the balance proceeds of sale remaining available for distribution.

MISCELLANEOUS

59.* Where a hypothecary action is heard *ex parte* under sections 84 and 85 of the Civil Procedure Code the decree entered thereunder shall not be set aside under the provisions of section 86 of that Code, and the judgment entered thereunder shall not be deemed to be a judgment entered upon default for the purpose of section 88 of that Code.

Decree absolute in default of appearance.

60. (1) A mortgagee's costs recoverable in a hypothecary action include all costs, charges and expenses properly incurred by him in relation to the action whether before or after the institution of the hypothecary action notwithstanding that they may have been incurred after the entry of decree in the action.

Costs.

(2) In any case where notice of a hypothecary action is not issued under subsection (1) of section 9 to a person entitled to such notice and such person is thereafter added as a party whether in pursuance of a notice under subsection (2) of that section or under section 13 or such person intervenes in the action under section 18, the court shall have the power to make such orders as to costs, whether as against the plaintiff or otherwise, and to revise any orders previously made in the proceedings, as the court may think fit in the circumstances of the case.

* This section has been recast as references to "decree nisi" and "decree absolute" in sections 84 and 85 of the Civil Procedure Code have been omitted by a 1977 amendment of that Code.

Application of Chapter XXII of the Civil Procedure Code.

61. (1) Where the mortgaged land is directed to be sold by any person other than the Fiscal, or where the mortgaged land is directed to be sold by the Fiscal without being previously seized as provided in section 49—

(a) sections 271, 273, 282, 283, 289 and 291 to 295 of the Civil Procedure Code shall be applicable ;

(b) section 297 of that Code shall be applicable if the property is sold by the Fiscal;

(c) sections 338 to 340, 342, 344, 345, 346, 349 and 350 of that Code shall be applicable ;

(d) section 343 of that Code shall be applicable, subject to the modification that the court shall not under that section stay execution proceedings for the purpose only of allowing time for payment by the judgment-debtor, unless he satisfies the court that there is reason to believe that the amount of the decree may be raised by mortgage, lease or private sale of the mortgaged land or of any other immovable property of the debtor, and to the further modification that the time allowed for the purpose aforesaid shall not be longer than six months ;

(e) sections 288 and 323 to 330 of that Code shall be applicable in every case where an order is made under section 54 of this Act for the delivery of possession of the mortgaged land to the purchaser at the sale ;

(f) save as hereinbefore provided, nothing in Chapter XXII of the Civil Procedure Code shall be applicable.

(2) For the purpose of the application of the provisions of the Civil Procedure Code where the land is sold by a person other than the Fiscal, any reference in those provisions to the Fiscal shall be deemed to be a reference to the person conducting the sale.

(3) Nothing in sections 298 to 319 of the Civil Procedure Code shall apply in any hypothecary action or any action to enforce payment of the moneys due upon a mortgage of land.

(4) Where the mortgaged land is sold by the Fiscal after being seized as provided in section 49, and an order for the delivery of possession is made under section 287 of the Civil Procedure Code, the provisions of sections 323 to 330 of that Code shall be applicable.

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

Application of this Part.

Provided that nothing in those provisions shall apply to any action instituted before the appointed date, and the provisions of the Mortgage Ordinance shall, notwithstanding the repeal thereof, continue to apply in relation to any action instituted before that date.

PART III

CONVENTIONAL GENERAL MORTGAGE-FLOATING AND CONCURRENT MORTGAGE—POWER OF ATTORNEY To CONFESS JUDGMENT

63. No conventional general mortgage, executed after the 14th day of January, 1871, shall be valid and effectual, so as thereby to give the mortgagee any lien, charge, claim, or priority over or in respect of any property movable or immovable.

General mortgages abolished.

64. (1) In any of the following cases, that is to say :—

Effect of mortgages to secure future liability, &c.

(a) where a mortgage is given to secure future advances (whether with or without any previous advances or other liability) ;

(b) where a mortgage is given to secure the floating balance from time to time due upon any account;

(c) Where a mortgage is given to secure any contingent liability,

such mortgage shall, subject to the provisions of subsections (2) and (3), be effective to the full extent of the charge intended to be created thereby as against any person claiming under any subsequent mortgage or transfer, notwithstanding that no money may have been actually due at the date of such subsequent mortgage or transfer in respect of the liability intended to

be secured, and irrespective of the actual amount so due on such date.

(2) Where any property which is subject to a mortgage given for any purpose mentioned in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) is seized in execution of a decree in favour of any person other than the mortgagee, the seizing creditor may make application to the court by which the decree was entered for the issue of a notice of such seizure on the mortgagee ; and where such notice is issued, then, notwithstanding anything in subsection (1), the mortgage shall as against a person purchasing such property at a sale under the seizure or any other person claiming under him, be effective only to the extent of the moneys actually due under the mortgage at the date of the receipt by the mortgagee of the notice issued by the court, under the preceding provisions of this subsection.

(3) The preceding provisions of this section shall apply to the mortgage of any property movable or immovable :

Provided, however, that where a mortgage of movable property is given for any purpose referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1), the preceding provisions of this section shall affect only the extent to which the property is subject to the mortgage, and the movable property shall not, by reason of the operation of those provisions, be deemed or construed to continue to be subject to the mortgage to any extent whatsoever as against any person claiming under a subsequent mortgage or transfer, unless—

- (a) such property continues, by virtue of any law other than this Act, to be subject to the mortgage to the extent of the moneys actually due thereunder at the date of the subsequent transfer or mortgage ; or
- (b) where no moneys are actually due at that date, unless such property would by virtue of such other law have continued to be subject to the mortgage if moneys had been actually due thereunder at that date.

(4) Nothing in subsection (2) shall apply in the case of any mortgage given for the purpose of guaranteeing the fidelity of a person employed as the servant or agent of another person or of securing the due custody and payment of moneys which may come into the hands of any person in his capacity as such servant or agent.

(5) In this section "transfer" includes any instrument creating any interest in the mortgaged property -

65. (1) Where a mortgage bond is executed in favour of two or more persons (each of whom is hereinafter referred to as a "mortgagee") in consideration of sums due or to be due to each of such persons by the mortgagor,

Action by concurrent mortgagee.

- (a) any such mortgagee to whom any moneys secured by the mortgage are due and payable, may institute a hypothecary action for the enforcement of the mortgage, and in such action join as a defendant every such mortgagee who is not a plaintiff in the action ;
- (b) any such mortgagee, whether or not he is a plaintiff in the action, shall be entitled to prove before decree the amount of the moneys due to him under the mortgage, and the decree shall order payment of separate amounts to each mortgagee who has so proved the amount due to him ;
- (c) the mortgaged property shall be liable to be sold under the decree on application made by any of the mortgagees to whom payment is ordered by the decree notwithstanding that the amounts due to all the mortgagees have not been proved before decree, and the sale of the mortgaged property in execution of the hypothecary decree shall extinguish the rights in relation to the property of every such mortgagee, whether he is joined as a plaintiff or as a defendant;
- (d) the court shall make such orders in relation to the distribution of the proceeds of the sale or the retention

thereof in court, as may be necessary having regard to the rights of the parties to payment out of such proceeds or to any other interests of the parties in such proceeds ; and any mortgagee who has not proved his claim before decree may prove such claim after decree :

Provided, however, that if payment out of the proceeds of the sale is not made to any such mortgagee by reason that a claim of any other such mortgagee in such proceeds has not been proved, and if such other claim remains unproved for a period of six months after the sale, the court shall order payment to be made out of such proceeds to such mortgagees whose claims have been proved whether before or after decree.

(2) In any action upon any mortgage bond referred to in subsection (1) no leave to bid for and purchase any mortgaged land shall be granted to any mortgagee under section 51 except upon the condition that he shall not bid for or purchase the land except at or above the total amount due under the decree to all the mortgagees to whom payment is ordered to be made thereby, or the appraised -value of the land as fixed under subsection (3) of that section, whichever is less.

(3) Where in any action upon any mortgage bond referred to in subsection (1), the court has made an adjudication as to the amount due under the mortgage to every mortgagee, then any such mortgagee shall, at the sale of the mortgaged land—

- (a) if the full amount ordered in the decree to be paid to all the mortgagees is greater than the appraised value of the land, be given credit • in an amount which bears to the appraised value the same proportion as the amount ordered in the decree to be paid to him bears to the full amount so ordered to be paid to all the mortgagees ; or
- (b) if the appraised value is the same as or greater than the full amount so

ordered to be paid, be given credit up to the amount ordered in the decree to be paid to him.

(4) Where in any action upon a mortgage bond referred to in subsection (1) the court has made an adjudication as to the amount due under the mortgage to one or some only, but not all, of the mortgagees, no mortgagee shall at the sale of the mortgaged land be given any credit notwithstanding that any amount may be ordered in the decree to be paid to him.

(5) The preceding provisions of this section shall apply in the case of every bond referred to in subsection (1) notwithstanding anything in the bond contained :

Provided that those provisions shall not apply where the bond contains provision expressly referring to this section and excluding its operation.

66. (I) In the case of any mortgage created after the appointed date, no warrant or power of attorney shall be given to any person to confess judgment in any action for the enforcement of the mortgage, and no warrant or power so given shall be of any force or effect in law :

Warrant of attorney to confess judgment in mortgage action.

Provided that nothing in the preceding provisions of this section shall apply in any case where a general power of attorney referred to in section 25 of the Civil Procedure Code has been granted by any mortgagor.

(2) Where a warrant or power of attorney to confess judgment in any action for the enforcement of a mortgage has, at any time before the appointed date, been given to a proctor, no judgment or decree in such action, whether entered before or after such date, and no sale in execution of such decree, shall be or be held to be invalid on the ground that—

- (a) the warrant or power, being executed in the form No. 12* in the First Schedule to the Civil Procedure Code, did not authorize the proctor to consent to the entry of judgment or decree for the sale of any property of the mortgagor ; or
- (b) the warrant or power was not executed in the aforesaid form No. 12* in that it contained provision authorizing

* Form No. 12 is omitted from this Edition.— See Civil Procedure Code.

or purporting to authorize the proctor to consent to the entry of judgment or decree for the sale of any property of the mortgagor ; or

one other witness ; and where such instrument is so signed and attested, nothing in section 2 of the Prevention of Frauds Ordinance shall apply thereto.

- (c) the warrant or power authorized the proctor to consent to the entry of judgment or decree for a specified sum and not for the sum due and payable under the mortgage.

(2) Every instrument referred to in section 69 shall be executed in duplicate.

(3) Every approved credit agency—

(a) shall cause to be numbered with consecutive integral numbers the instruments executed in its favour under section 69 according to the order in which they are executed ;

(b) shall, before the fifteenth day of each month, deliver or transmit to the Registrar of Lands of the district in which it carries on business the duplicates of all such instruments executed in its favour during the preceding month together with a list of the instruments ;

(c) shall deliver or transmit to the Registrar of Lands of the district in which it carries on business, so as to reach the Registrar on or before Wednesday in each week, a list of such instruments executed in its favour during the week ending the previous Saturday ;

(d) if any such instrument affects a land situated in any district other than that in which the agency carries on business, shall, on or before the fifteenth day of the month following that in which the same was executed, besides transmitting the duplicates in manner aforesaid, deliver or transmit a copy of the instrument to the Registrar of the district in which such land is situated, together with a list of all such instruments as relate to lands in such last-mentioned district; and

(e) if any such instrument is executed by an attorney, shall forward a copy of the power of attorney to the Registrar of Lands, together with the duplicate of the instrument.

(4) An instrument referred to in section 69 may be registered under the Registration of Documents Ordinance as an instrument affecting land.

Production to court of title deeds of mortgaged land.

67. Where the mortgagee of any land is in possession of the title deeds relating to the mortgaged land, the court -having jurisdiction to entertain an action upon the mortgage may, whether or not such action is instituted, if it is satisfied on application made by the mortgagor by petition and affidavit that the mortgagor is likely to be able to effect a sale, mortgage or lease of the land to any other person, make order directing the mortgagee to produce such title deeds and to keep them in the custody of the court during such period as may be specified in the order, for the purpose of enabling them to be inspected and examined by such person.

No security for costs in actions on mortgage.

68. Nothing in Chapter XXVIII of the Civil Procedure Code shall apply in any hypothecary action or in any action to enforce payment of the moneys due upon any mortgage.

PART IV

SPECIAL MORTGAGE OF LAND ACCOMPANIED BY DEPOSIT OF TITLE DEEDS

Creation of mortgage by deposit of deeds and prescribed instrument.

69. The owner of any land may create a mortgage of such land in favour of any approved credit agency by—

(a) the execution of an instrument in the form set out in the Second Schedule to this Act ; and

(b) the deposit with such agency of the title deeds of such land.

Execution and attestation of instrument.

70. (1) The instrument referred to in section 69 may be signed in the presence of, and the execution of such instrument may be attested by, the manager or secretary or any director or other person holding any prescribed office in the agency and at least

(5) The provisions of section 23 of the Registration of Documents Ordinance shall apply in relation to any instrument referred to in section 69 in any case where movable property is also affected thereby.

Special provisions as to payment of stamp duty.

71. (1) In the case of an instrument referred to in section 69, an amount equal to one-fifth of the duty chargeable under Schedule A* to the Stamp Ordinance in the case of a bond or mortgage of a like nature (which duty so chargeable is hereinafter referred to as the "statutory stamp duty") may be paid at the time of execution, and where such amount is paid, the instrument shall be deemed to be duly stamped for the purposes of that Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of six months commencing on the date of the execution thereof.

(2) In any case where one-fifth of the statutory stamp duty is paid at the time of the execution of any instrument referred to in section 69, the following provisions shall have effect :—

- (a) A further amount equal to one-fifth of the statutory stamp duty may be paid to the Commissioner-General of Inland Revenue before the expiry of the period of six months referred to in subsection (1) or within fourteen days thereafter, and upon such payment being certified by the Commissioner-General of Inland Revenue as hereinafter provided, the instrument shall be deemed to be duly stamped for the purposes of the Stamp Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of six months immediately succeeding the period referred to in subsection (1) ;
- (b) A further amount equal to two-fifths of the statutory stamp duty may be paid before the expiry of the succeeding period of six months referred to in paragraph (a) of this subsection or within fourteen days thereafter, and upon such payment

being certified by the Commissioner-General of Inland Revenue as hereinafter provided, the instrument shall be deemed to be duly stamped for the purposes of the Stamp Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted or the instrument is discharged, during the period of one year immediately succeeding the said period of six months ;

- (c) Where proceedings for the recovery of the moneys secured by the instrument are not instituted, or the instrument is not discharged before the expiry of a period of two years from the date of the execution thereof, the instrument shall be deemed for the purposes of the Stamp Ordinance to be an instrument which is not duly stamped unless a further amount equal to one-fifth of the statutory stamp duty is paid before the expiry of the aforesaid period of two years or within fourteen days thereafter, and such payment is certified by the Commissioner-General of Inland Revenue as hereinafter provided ; and where such payment is so made and certified the instrument shall for all purposes be deemed to be duly stamped in like manner as though the statutory stamp duty had been paid at the time of the execution of the instrument ;
- (d) Where, by reason of the fact that payments of duty have not been made as provided in the preceding paragraphs, the instrument is deemed for the purposes of the Stamp Ordinance to be not duly stamped, then, for the purposes of the application of the proviso to section 41 of that Ordinance, the amount of the duty chargeable on such instrument under that Ordinance shall be deemed to be an amount equal to six-fifths of the statutory stamp duty and the amount of the deficiency to be recovered under that proviso shall be determined accordingly.

* See List of Enactments omitted from the Revised Edition.

(3) Where the Commissioner-General of Inland Revenue, or any other officer of his department duly authorized by him in that behalf, is satisfied, upon presentation to him of an instrument, that a payment has been duly made in accordance with any provision of paragraphs (a) to (c) of subsection (2), the Commissioner-General or such officer shall by means of an endorsement under his hand on such instrument certify that such payment has been duly made.

No payment shall be certified by the Commissioner-General or any officer under the preceding provisions of this subsection unless the instrument is presented to him within fourteen days of the date of such payment ;

Provided, however, that the Commissioner-General or such officer may in his discretion certify such payment notwithstanding any delay in the presentation of the instrument, if he is satisfied that the delay was due to inadvertence.

(4) All payments of stamp duty under subsection (2) of this section shall be made by sending to the Commissioner-General the amount of the further duty from time to time to be paid under that subsection,

72. (1) The payments for which provision is made by section 71 may be made by the approved credit agency without prior reference to the person executing the instrument.

(2) The amount of every payment made as provided by section 71 may be added to the amount the payment of which is secured by the instrument, and if so added, shall be recoverable accordingly.

PART V

MORTGAGE OF MOVABLES : SPECIAL PROVISIONS APPLICABLE WHERE MORTGAGEE IS AN APPROVED CREDIT AGENCY

73. (1) Where the holder of any shares—

(a) creates a mortgage of such shares in favour of an approved credit agency by means of an instrument in the form set out in the Third Schedule to this Act, and

(b) deposits with such agency the certificate or certificates issued to him in respect of such shares, and

(c) executes and delivers to such agency an instrument of transfer of such shares in favour of such agency or of any nominee of such agency, or an instrument of transfer in which the name of the transferee is not entered at the time of the execution (hereinafter referred to as a "transfer in blank"),

the provisions hereinafter set out shall apply, that is to say—

(i) if the shares are mortgaged as security for the payment of any moneys stated to be payable on demand, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency of a notice of demand in accordance with the provisions of section 74, or

(ii) if the shares are mortgaged as security for the payment of any moneys stated to be payable on a specified or ascertainable date, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency, after that date, of a notice of demand in accordance with the provisions of section 74,

it shall be lawful for the agency to sell, or as the case may be to cause the nominee to sell, the shares, at their current market value, and where a transfer in blank had been executed, to complete the sale by the insertion in the transfer in blank of the name of the purchaser as the transferee of the shares.

(2) The right of the agency to sell any shares under subsection (1) shall include the right to purchase the shares at the current market value, or where the transfer had been executed in favour of the agency to retain the shares, credit being in either event given to the mortgagor to the extent of the current market value.

Right of mortgagor to make and recover payments of stamp duty.

Right of approved agency to realise shares mortgaged in specified circumstances.

(3) The rights of the agency under the preceding provisions of this section may be exercised in respect of all the shares which are for the *time* being subject to the mortgage under the instrument referred to in subsection (1) (a) or separately in respect of any shares so subject.

Address of mortgagor and issue of notice of demand.

74. (1) Every instrument of mortgage referred to in paragraph (a) of section 73 (1) shall contain the address to which notice of demand of payment may be sent to the mortgagor by the agency :

Provided, however, that upon any change of address the mortgagor may notify the new address to the agency and such new address, if acknowledged in writing by the agency, shall, for the purposes of section 73, be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument referred to in paragraph (a) of section 73 (1) or to such new address as may for the time being have been notified and acknowledged as provided in subsection (1) of this section.

Effect of exercise of right of sale, &c.

75. (1) Upon the exercise under section 73 of the right of sale or purchase of any shares and the completion of a transfer in blank by the insertion of the name of the purchaser as transferee of the shares, the transfer as so completed shall have the like effect as though it had been executed by the mortgagor at the time of completion.

(2) Where a transfer (other than in blank) of any shares has been executed by the mortgagor as provided in section 73 in favour of an approved credit agency or a nominee of such agency, the fact that the transfer had been executed by way of mortgage shall not affect the right of the agency or the nominee, during the pendency of the mortgage, to apply to be registered as holder of the shares and to be so registered.

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

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

- (a) the moneys realized upon such sale or credited as provided in section 73
- (2) shall be applied by the agency in

satisfaction of the debt due and payable under the mortgage, and the mortgagor shall be entitled to receive the balance, if any, remaining after such debt is satisfied ;

- (b) if the moneys realized or credited upon the sale or purchase of all the shares mortgaged by the instrument are insufficient to satisfy such debt, the deficiency may be recovered from the mortgagor in the ordinary course of law.

77. Where a mortgage of shares has been created as provided in section 73, and the mortgage is discharged by payment of the moneys due and payable thereunder, or by reason that the moneys realized upon a sale or purchase of some only of the shares so mortgaged are sufficient to satisfy the debt, or otherwise—

Rights of mortgagor on discharge of mortgage

- (a) the mortgagor shall be entitled, in the case of a transfer . in blank, to receive from the agency the certificate or certificates in respect of such shares or of the shares remaining unsold, as the case may be, together with the transfer in blank in respect thereof ;

- (b) the mortgagor shall be entitled in the case of a transfer otherwise than in blank, to receive from the agency or its nominee at the instance of the agency, a duly executed instrument of retransfer of the share or of the shares remaining unsold, as the case may be.

78. (1) Where any shares mortgaged as provided in section 73 are sold or caused to be sold, or are purchased by the agency, otherwise than in the due exercise of the right conferred in that behalf by that section, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of such sale or purchase :

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

Provided, however, that no such action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand under section 74 was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the

proper address referred to in the aforesaid section 74, and that the right of sale or purchase was exercised after one month from the date of such posting.

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

79. The operation of any other written law or of any regulations or provisions which apply to the transfer of shares, or to the registration of the transferee of any shares as the holder thereof, or which confer any right to decline to effect such registration shall not in any way be affected or modified by reason that a transfer of any such shares is effected in the exercise of the right conferred by section 73.

Meaning of " shares "

80. For the purpose of sections 73 to 79—

" shares " means any shares, debentures, stock or other securities in the funds of the Government of Sri Lanka or in the capital of any company incorporated or registered in Sri Lanka ;

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

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

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

(a) creates a mortgage of the policy" in favour of an approved credit agency by means of an instrument in the form set out in the Third Schedule to this Act, and

(b) assigns the policy to the agency by way of mortgage and deposits it with such agency,

the following provisions shall have effect, that is to say—

(i) if the policy is mortgaged as security for the payment of any moneys stated to be payable on demand, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within six months of the issue of notice of demand of payment in accordance with the provisions of section 82, or

(ii) if the policy is mortgaged as security for the payment of any moneys

stated to be payable on any specified or ascertainable date, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within six months of the issue, after that date, of notice of demand of payment in accordance with the provisions of section 82, or

(iii) if any premium due on the policy remains unpaid after one month from the issue, in accordance with the provisions of section 82, by the agency of a notice demanding payment of such premium to be made to the insurer,

such agency shall be entitled to surrender the policy to the insurer and to receive payment of the surrender value of the policy or of such amount as would have been payable to the assured if the policy had been surrendered by him.

In any case to which this section applies, the payment to the agency by the insurer of the surrender value of the policy or of such other- amount of which the agency is declared by this section to be entitled to receive payment shall be a discharge of the liability of the insurer upon the policy.

82. (1) Every instrument of mortgage referred to in paragraph (a) of section 81 shall contain the address to which notice of demand of payment may be sent to the mortgagor by the agency :

Address of mortgagor and issue of notice of demand.

Provided, however, that upon any change of address the mortgagor may notify the new address to the agency which shall thereupon acknowledge the new address in writing ; and such new address, if so acknowledged, shall, for the purposes of section 81, be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument referred to in paragraph (a) of section 81 or to such new address as may for the time being have been notified and acknowledged as provided in subsection (1) of this section.

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Moneys received upon surrender to be applied in satisfaction of debt.

83. Where any policy of insurance is surrendered in the exercise of the right conferred by section 81—

- (a) the moneys received by the agency from the insurer shall be applied in satisfaction of the debt due and payable under the mortgage ;
- (b) the mortgagor shall be entitled to payment from the agency of the balance, if any, remaining after satisfaction of such debt;
- (c) if the moneys so received are insufficient to satisfy such debt, the agency shall be entitled to recover the deficiency in the ordinary course of law.

Right to damages, &c, for wrongful surrender.

84. If the policy is surrendered by the agency otherwise than in the due exercise of the right conferred by section 81, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by him in consequence of such surrender :

Provided, however, that no such action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand under section 82 was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in the aforesaid section 82, and that the right of surrender was exercised after the period of six months or the period of one month of the date of such posting, whichever such period is applicable.

Power of approved credit agency to sell corporeal movables which are subject to mortgage.

85. (1) Where a mortgage of any corporeal movables is created in favour of an approved credit agency, it shall be lawful for the agency, subject to the provisions of subsections (2) and (3), to sell any of the movables subject to the mortgage which may for the time being be actually in the possession and custody of the agency.

(2) The power conferred on the agency by subsection (1) to sell any movables shall be exercised only if the instrument of mortgage or an agreement between the parties contains provision referring to this section and empowering the agency to exercise the power of sale conferred thereby, and if

either of the following conditions is fulfilled, that is to say—

- (a) where the mortgage is created as security for the payment of any moneys stated to be payable on demand, if the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency of a notice of demand in accordance with the provisions of section 86 ; or
- (b) where the mortgage is created as security for the payment of any moneys stated to be payable on a specified or ascertainable date, if the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency, after that date, of a notice of demand in accordance with the provisions of section 86.

(3) Every sale in exercise of the power conferred by subsection (1) shall be by public auction, and it shall be the duty of the agency to take such steps as are necessary to ensure—

- (a) that a notice containing a description of the movables to be sold and specifying the date fixed for the sale, is published in two issues of a daily newspaper circulating in Sri Lanka at least one week before the date fixed for the sale, and
- (b) that the sale takes place on the date so specified, or if the sale is postponed, that a further notice containing the particulars specified in subparagraph (a) is published at least one week before the date to which the sale is postponed. .

86. (1) The power of sale conferred by section 85 shall not be exercised unless the instrument of mortgage contains an address to which notice of demand of payment may be sent to the mortgagor by the agency ; or where there is no such instrument unless the mortgagor has in writing signed by him furnished an address as aforesaid to the mortgagee :

Notice of demand of payment prior to exercise of power of sale.

Provided, however, that upon any change of address, the mortgagor may notify his new address to the agency, and such new address, if acknowledged in writing by the agency, shall for the purposes of section 85 be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand of payment shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument of mortgage or the writing referred to in subsection (1), or to such new address as may, for the time being, have been notified and acknowledged as provided by that subsection.

Application of proceeds of sale-

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

- (a) the moneys realized upon such sale shall be applied by the agency in satisfaction of the debt due and payable under the mortgage, and the mortgagor shall be entitled to receive the balance, if any, remaining after such debt is satisfied ;
- (b) if the moneys realized upon the sale are insufficient to satisfy such debt, the deficiency may be recovered from the mortgagor in the ordinary course of law.

Damages for wrongful sale of mortgaged property.

88. Where any movables are caused to be sold by the agency otherwise than in the due exercise of the powers conferred in that behalf by section 85 or where the provisions of subsection (3) of that section are not complied with in relation to the sale, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of the sale or of the non-compliance, as the case may be ;

Provided, however, that no action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand of payment was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in section 86, and that the power of sale was exercised after one month from the date of such posting.

89. In sections 90 to 95 " book debt " means any debt which—

Meaning of " book debt

- (a) is due or may become due to any person on account of any loan made in the ordinary course of any business carried on by that person as a money-lender, or on account of goods sold in the ordinary course of any business carried on by that person as a seller of such goods, or on account of work or services performed or rendered in the ordinary course of any business carried on for profit by that person, and
- (b) is shown in the books kept by such person in the ordinary course of the business.

90. (1) An assignment of any book debt shall, if such assignment is executed in favour of an approved credit agency and is expressed to be by way of mortgage and is duly registered under the Registration of Documents Ordinance, confer on the agency, in addition to the right to enforce such mortgage by action in any competent court, the right to demand, accept and recover payment of such debt from the person owing such debt to the assignor :

Rights of approved credit agency to which book debts are assigned by way of mortgage.

Provided, however, that no right hereinbefore conferred on the agency shall be exercisable—

- (a) unless notice of the assignment is given by the agency, to the person owing such debt, in any manner provided by section 91, and the debt is due and unpaid at the date on which notice is so given ;
- (b)• if the right to demand, accept or receive such payment is, by the instrument of the mortgage, declared to be conditional upon the happening of any event or the non-fulfilment of any obligation by the assignor, unless such event has happened or such obligation has not been fulfilled within the time specified in that behalf in the instrument, as the case may be.

(2) The provisions of subsection (1) shall apply in relation to a book debt notwithstanding—

- (a) that it may not be specially assigned ; or
- (b) that it may not have been due, or that the consideration therefor may not have passed, at the time of the execution of the assignment.

Manner of giving notice of assignment to person owing book debt.

91. (1) Notice of the assignment of a book debt may be given by the agency to a person owing such debt in any manner set out hereunder, that is to say—

- (a) by sending or presenting to the person owing such debt a notice addressed to such person and signed by the assignor to the effect that the debt has been assigned to the assignee ; or
- (b) by sending or presenting to such person (i) a general notice signed by the assignor to the effect that all book debts which are due or may become due have been assigned to the assignee, or (ii) a copy of such notice certified by a director, manager, partner or secretary of the agency.

(2) Any notice referred to in paragraph (a) or paragraph (b) of subsection (1) may be signed by the assignor at the time of the execution of the assignment or at any time thereafter, and may be sent or presented to the person owing the debt at any time while the assignment is operative.

Application of moneys received in payment of mortgage debt.

92. Where payment of a book debt is made to the agency upon demand made in that behalf of the person owing such debt, the amount of the payment shall be applied in satisfaction of the moneys for the time being due and payable to the agency under the mortgage, and the balance, if any, remaining out of such proceeds shall be payable to the assignor.

Damages for wrongful exercise of power to recover book debt.

93. Where any book debt is recovered by the agency otherwise than in the due exercise of the powers conferred by section 90, the assignor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of such recovery.

94. (1) Notwithstanding the execution of any assignment referred to in section 90, but subject as hereinafter provided, the assignor shall, unless and until notice of the assignment is given to the person owing the debt, have the same right to recover such debt from such person whether by way of action or otherwise, and to appropriate to his own use any moneys so recovered, as though the assignment had not been executed :

Provision for recovery of book debt by assignor notwithstanding assignment.

Provided, however, that the agency shall be entitled, upon making application to any court in which an action for the enforcement of the assignment can properly be instituted, by petition supported by an affidavit declaring that moneys are due and payable to him under the mortgage, to obtain *ex parte* an injunction restraining the assignor from recovering any such debt, and if need be an order authorizing the Fiscal—

- (a) to enter the premises in which the assignor carries on his business, together with a person nominated in that behalf by the assignee and approved by the court;
- (b) to take possession of any such books kept or found therein as may contain entries relating to the book debts which are subject to the assignment ; and
- (c) to deliver such books to the assignee for the purpose of enabling him to recover such debts from the persons by whom they are owing,

and where an injunction is so issued nothing in the preceding provisions of this section shall authorize or be deemed to authorize the assignor to recover or sue for any debt in breach of such injunction.

(2) Where an injunction has been issued under subsection (1) or any order relating to the books has been made under that subsection, the court may thereafter upon application made by the assignor and after such inquiry as it may consider necessary, make such order in relation to the injunction and to the books as the court may think fit.

95. Notwithstanding the execution of any assignment referred to in section 90, the assignee shall not be entitled to demand or recover payment of any book debt which is

Protection for debtor paying without notice of assignment.

subject to the assignment from the person owing such debt if such debt had been paid by such person to the assignor before notice under section 91 is received by him.

the appointment of a receiver upon application duly made in that behalf in any case to which section 96 applies.

PART VI

MORTGAGE OF MOVABLES : GENERAL

APPOINTMENT OF RECEIVER

96. (1) Where a mortgage is created in respect of the entirety of the goods which are, or may at any future time be, in any specified premises, or of the goods which constitute or may at any future time constitute the entire stock in trade in any specified premises, and an action is instituted by the mortgagee for the enforcement of the mortgage or the recovery of the moneys due thereunder, the mortgagee may, at or after the time of the institution of the action, make application to the court by petition for the appointment of a receiver of the mortgaged property.

(2) Such application shall be supported by affidavit of the mortgagee stating the sum lent to the mortgagor, the sum, if any, repaid out of the loan, and the sums due to the mortgagee by way of principal and interest.

(3) Subject as hereinafter provided, the application for the appointment of a receiver shall, unless the mortgagee otherwise desires, be dealt with *ex parte* by the court :

Provided, however, that where the application is made at any time after the filing of an answer by the mortgagor, the application shall be dealt with after notice to the mortgagor.

97. The court may refuse to make an order for the appointment of a receiver under section 96, if having regard to the value and nature of the business the stock in trade of which is the subject of the mortgage, or the nature and value of the goods, as the case may be, and to the amount which in the circumstances of the case can reasonably be allowed as the remuneration of the receiver, the court is of opinion that a suitable person is not available for such appointment.

Save as hereinbefore expressly provided, the court shall not refuse to make order for

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

Directions in order of appointment, &c.

(a) provide for the committal of the mortgaged property and if need be of the business carried on by the mortgagor at the specified premises to the custody and the management of the receiver ;

(b) contain such directions as the court may in its discretion consider necessary authorizing the receiver to carry on the business of the mortgagor at the premises, to sell all or any of the mortgaged property whether by public auction or otherwise, and to exercise in respect of the mortgaged property such other rights as may be specified in the order.

(2) The court may, by subsequent order, on application made by the receiver, the mortgagor or the mortgagee—

(a) give any directions which might have been given in an order under subsection (1), or vary any directions previously given whether under that subsection or under the preceding provisions of this subsection ;

(b) authorize the receiver to institute or defend any action or proceedings in respect of any matter affecting the mortgaged property or the management and administration of the business or the recovery of any moneys due upon the sale of the mortgaged property.

(3) The person appointed to be the receiver of the mortgaged property shall, for the purposes of the exercise of the rights conferred on him by any directions given under the preceding provisions of this section, have and be entitled to exercise all the rights and powers of the owner of the mortgaged property.

(4) Where the receiver is obstructed in taking possession of the mortgaged

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

Refusal to appoint receiver.

property, the court may after inquiry make such orders as may be necessary for the purpose of securing that delivery of possession is given to the receiver.

Duties and liabilities of receiver.

99. Every receiver appointed in any case to which section 96 applies shall—

- (o) render accounts to court in such form , and at such times as the court may direct in that behalf ;
- (b) make payment to court to the credit of the action, from time to time as the court may direct, of the nett receipts received by him in his capacity as such-;
- (c) be responsible for any damage to the mortgaged property, or for the loss of any income, incurred by his gross negligence or by any intentional act on his part.

Moneys to be kept in court.

100. (1) All moneys paid into court by the receiver under section 99, shall, unless the court otherwise directs, be kept in court to the credit of the action until the final disposal of the action :

Provided that payment may from time to time be made out of such moneys of the remuneration due to the receiver.

(2) The amount of the moneys in court to the credit of the action at the date of the decree entered in the action shall be applied in satisfaction of the amount stated in the decree to be due upon the mortgage.

(3) No seizure of such moneys in execution of any order or decree in any other action (other than an action for the enforcement of a mortgage having priority to the mortgage in suit in the action referred to in section 96) shall affect the operation of subsection (2) of this section.

Restriction of appeals against appointment, &c., of receiver.

101. No appeal shall lie against the refusal of the court to make any order for the appointment of a receiver upon application under section 96 or against any order or directions made or given under any of the provisions of sections 97 to 100, other than the provisions of subsection (4) of section 98.

MORTGAGE OF MOTOR VEHICLES

102. (1) Where any motor vehicle is mortgaged to any person—

Special registration of mortgage of motor vehicle.

(a) the instrument of mortgage shall , on presentation to the Registrar of Motor Vehicles, be registered by means of an entry made in the Register of Motor Vehicles kept under the Motor Traffic Act ;

(b) the certificate of registration issued under that Act to the registered owner of the motor vehicle may be presented to the Registrar of Motor Vehicles, who shall, on such presentation, make an endorsement on the certificate to the effect that the motor vehicle has been mortgaged by the instrument of mortgage.

(2) Application for registration under subsection (1) shall be made by the mortgagor and shall be accompanied by a fee of one rupee.

(3) The Registrar shall, on application made in that behalf by any person interested and on payment of a fee of one rupee, issue a certified copy of any entry made under subsection (1).

(4) In this section and in sections 103 and 104, " motor vehicle " has the same meaning as in the Motor Traffic Act.

103. Where the instrument of mortgage of any motor vehicle has been registered under section 102, the following provisions shall apply :—

Registered mortgage of motor vehicle to subsist notwithstanding sales, &c"to thlrd party

(a) Notwithstanding anything in any other law, any sale or other disposition of the motor vehicle by or against the mortgagor shall not, so long as the mortgage continues in force, extinguish or be deemed to extinguish the mortgage of the motor vehicle, which shall remain subject to the mortgage in the hands of the transferee or other person in whose favour such disposition is effected ;

(b) Upon the issue by the Registrar under the Motor Traffic Act of any new certificate of registration to any person registered as the new owner

or of a duplicate certificate, the Registrar shall make an endorsement on the certificate to the effect that the motor vehicle has been mortgaged by the instrument referred to in paragraph (a) of section 102 (1).

Cancellation of registration of mortgage of motor vehicle.

104. The registration by the Registrar of an instrument of mortgage of a motor vehicle and any endorsement made upon the certificate of registration under section 102 or under section 103 to the effect that the motor vehicle is mortgaged, shall be cancelled by the Registrar at the request of the mortgagee or upon an order being made by a District Court directing such cancellation upon application made to it in that behalf by petition and affidavit.

RIGHTS OF MORTGAGEE OF MOVABLES IN SPECIFIED CIRCUMSTANCES

Rights of mortgagee of movables seized by other creditor.

105. (1) Where any movable property whatsoever which is subject to a mortgage is seized in execution of a decree in favour of any person other than the mortgagee—

- (a) the claim of the mortgagee shall not be investigated or dealt with as provided in sections 241 to 247 of the Civil Procedure Code ;
- (b) the mortgagee shall be entitled to make application to be added as a party to the proceedings in which the seizure was effected ;
- (c) where the mortgagee is so added before the sale under the seizure, and makes application in that behalf supported by affidavit declaring that the property is subject to a mortgage in his favour, the court shall order that the sale under the seizure be stayed and that the property be sold by public auction by an auctioneer to be appointed under subsection (2).

(2) Notice of an order under subsection (1) (c) shall be given to the parties to the action, and the court shall after such inquiry as may be necessary appoint an auctioneer to conduct the sale and give directions as to the time and manner of such sale.

(3) Where the seizure of the movable property is released after the making of an order under subsection (1) (c) for the sale thereof, the order under that subsection shall be annulled and no further proceedings shall be taken thereon.

(4) Where the mortgagee is added under subsection (1) as a party to the action and the movable property is or has been sold, whether under the seizure or under an order made under subsection (1) (c), and it is proved to the satisfaction of the court (after trial of such relevant issues as may be framed) that the movable property was at the date of such addition subject to the mortgage and either (i) that any sum was due and payable under the mortgage at that date or on demand, or (ii) that any sum, the amount of which is ascertainable, is certain to fall due for payment under the mortgage upon the effluxion of time without the happening of any future event or the future fulfilment of any condition—

- (a) the court shall order that payment shall be made to the mortgagee, out of the proceeds of the sale of the property, of the sum so proved ;
- (b) the balance, if any, remaining out of such proceeds shall be deemed to be the proceeds of a sale held under the seizure and be available for distribution accordingly ;
- (c) if the proceeds of the sale are insufficient to satisfy the sum so proved, the payment of such proceeds to the mortgagee shall not prejudice his right to recover any amount outstanding by subsequent action against the mortgagor, but in any such action every determination of the court under the preceding provisions of this subsection shall be *res adjudicata* as between all persons who were parties to the proceedings under this section.

106. (1) Where any movable property whatsoever is subject to a mortgage, and the mortgagor is adjudicated insolvent, the mortgagee shall, upon making an application in that behalf by petition and affidavit in the proceedings upon such insolvency, be entitled to obtain in those proceedings an order directing that the

Rights of mortgagee of movables upon insolvency of mortgagor.

property be sold by public auction by an auctioneer approved by the court in accordance with such directions as may be issued by the court in that behalf.

The court may, if it thinks fit, before approving the auctioneer or giving such directions, issue notice to the assignee of the estate of the insolvent.

(2) Where any property is sold upon application made under subsection (1), and it is proved to the satisfaction of the court, after trial of such relevant issues as may be framed, that the movable property was at the date of the application subject to the mortgage and either (i) that any sum was due and payable under the mortgage on that date or (ii) that any sum, the amount of which is ascertainable, is certain to fall due for payment under the mortgage upon the effluxion of time without the happening of any future event or the future fulfilment of any condition—

- (a) the court shall order that payment shall be made to the mortgagee, out of the proceeds of sale of the property, of the sum so proved ;
- (b) the balance, if any, remaining out of such proceeds shall be kept in court to the credit of the assignee ;
- (c) if the proceeds of sale are insufficient to satisfy the sum so proved, the payment of such proceeds to the mortgagee shall not prejudice his right to prove his claim in respect of the deficiency in the proceedings upon insolvency.

DECREE AND SALE OF MOVABLES IN HYPOTHECARY ACTION

Order for sale and directions.

107. Where in a hypothecary action in respect of any movable property the court finds that the mortgage ought to be enforced, the decree shall, in relation to the mortgaged movables, order that the movables shall be sold in default of payment within such period as may be specified by the court not exceeding one month from the date of the decree, of the moneys due under the mortgage :

Provided, however, that the court may, in its discretion and subject to such conditions, including the making of specified payments on specified dates as it thinks fit, on application made in that behalf before the entry of the decree, fix such longer period than one month as the court may consider reasonable.

108. Subject as hereinafter provided the mortgaged movables shall be seized and sold by the Fiscal under Chapter XXII of the Civil Procedure Code and all the provisions of that Code relating to the seizure and sale and delivery to the purchaser of movable property seized in execution of a decree for the payment of money shall apply accordingly :

Manner of sale of mortgaged

Provided, however, that the court may, in its discretion if it thinks fit so to do, either in the decree or subsequently, direct that the property shall be sold by the Fiscal or by an auctioneer approved by the court, without being previously seized, and shall in such case in the decree or subsequently give directions as to the conduct and conditions of sale to the delivery of possession to the purchaser at such sale, and as respects such other matters as the court may find necessary.

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

Application of this part-

PART VII

MISCELLANEOUS

RIGHTS OF LANDLORD IN RELATION TO GOODS UPON PREMISES OF WHICH RENT IS IN ARREAR

110. (1) A plaintiff in an action for the recovery of the rent due from a tenant in respect of any premises shall be entitled, upon satisfying the court that rent is due from the tenant and has been in arrear for one month after it has become due, to obtain from the court, *ex parte* an injunction restraining the tenant from removing any goods from the premises or causing or permitting the removal therefrom of any goods, at any time while any rent remains due and unpaid, unless authority has been granted in that behalf under subsection (3).

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

(2) Every application for an injunction under subsection (1) shall be made in the manner provided by section 662 of the Civil Procedure Code and all the provisions of Chapter XLVIII of that Code, other than section 664, shall apply accordingly.

(3) When an injunction has been issued under subsection (1) in respect of the goods upon any premises and is for the time being in force, the court may upon application made by petition supported by affidavit, and after notice to the plaintiff and such inquiry as the court may deem necessary, by order authorize the removal of any goods from the premises if satisfied—

- (a) that such goods are owned by any person other than the tenant or a member of his family ; or
- (b) that such goods are not household goods and are owned by a member of the family of the tenant.

(4) Where an injunction has been issued under subsection (1) in respect of the goods upon any premises and is for the time being in force, any person who knowing or having reason to believe that it is unlawful for the tenant to remove or cause or permit the removal of the goods from the premises, removes or assists in the removal from the premises of any goods the removal of which is not authorized by order under subsection (3), may be punished as for a contempt of court in like manner as a tenant in case of disobedience.

(2) No action for damages shall lie by reason of the seizure, in execution of any decree in an action for rent due in respect of any premises, of any goods for the time being upon the premises, on the ground only that they do not belong to the tenant or to a member of his family as hereinafter defined.

112. A landlord of any premises shall not, by reason of the non-payment of rent of such premises, have any right in respect of the goods which are or may have been upon the premises, other than the right conferred by section 110 and the right to seize goods which are declared by section 111 to be liable to such seizure, or which, being goods belonging to the tenant, are liable to seizure under the Civil Procedure Code.

Rights of landlord in relation to goods on premises.

113. In sections 110 to 112, " member of the family ", in relation to a tenant, means the wife or any child of the tenant residing with him, and includes any relative or other person dependent upon the tenant and residing with him.

APPROVAL OF CREDIT AGENCIES, &C.

114. (1) Every application for a declaration of any company, firm, institution or individual as an approved credit agency under paragraph (c) of section 3 shall be made to the Director of Commerce.

Approval of credit agencies, &c.

Every such application shall be referred to a board consisting of a chairman and two other persons nominated by the Minister.

(2) The Director shall, if the board so recommends upon any application, by Notification published in the Gazette, declare the applicant to be an approved credit agency for the purposes of this Act.

(3) The decision of the board upon any such application shall be final.

(4) Where any company, firm, institution or individual has been declared under paragraph (c) of section 3 to be an approved credit agency, the board of its own motion or on representations made by the Director of Commerce may recommend to the Director that the declaration made under

Liability of goods to seizure under decree for rent.

111. (1) Subject to the proviso to section 218 of the Civil Procedure Code, all goods belonging to a tenant and all household goods belonging to any member of his family as hereinafter defined and for the time being upon any premises shall be liable to be seized in execution of a decree in an action against the tenant for rent due in respect of the premises, and where such goods are so seized and sold, the payment of the amount of the decree shall be a first charge on the proceeds of sale in preference to any other charge or interest whatsoever other than a charge in favour of the State or of any local authority.

that paragraph should be revoked with effect from a date specified by the board. The decision of the board in any such case shall be final, and upon such recommendation being made the Director shall by notification in the Gazette revoke the declaration with effect from the date so specified :

Provided, however, that the revocation shall not in any way affect the validity or the operation of any instrument duly executed in favour of such agency under any provision of this Act or of any other written law prior to the date on which the revocation takes effect, or affect the power of such agency to exercise after that date any right which may be exercised under any such written law by virtue of the instrument so executed before that date.

(5) The members of the board may be paid such remuneration (not exceeding fifty rupees for each sitting) as may be fixed by the Minister, out of moneys voted for the purpose by Parliament.

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

(7) Nothing in Part IV or Part V of this Act shall be deemed or construed to authorize any institution mentioned in paragraph (6) of section 3 to make loans upon the security of any property, if the power to make loans on such security is not conferred on such institution by the written law providing for the establishment, powers and functions of such institution.

RULES

115. (1) The Minister in charge of the Rules. subject of Justice may make rules—

- (a) providing for the amendment of any of the forms set out in any of the Schedules to this Act or the substitution for any such form of any new form ;
- (b) authorizing the inclusion in any instrument executed under section 69 of any covenants and agreements on the part of the person creating the mortgage or of the agency in whose favour the mortgage is created ;
- (c) declaring the offices which shall be prescribed offices for the purposes of section 70.

(2) Every rule made under subsection (1) shall be submitted to Parliament for approval. Every rule so approved shall be published in the Gazette, and shall come into force upon such publication.

SAVINGS FOR APPOINTMENT OF RECEIVERS UNDER CIVIL PROCEDURE CODE

116. The powers conferred by this Act for the appointment of receivers of mortgaged property shall be in addition to and not in substitution or derogation of the power to appoint receivers which is conferred by Chapter L of the Civil Procedure Code :

Savings for appointment of receivers under Civil Procedure Code.

Provided that nothing in that Chapter shall apply in any case where application is duly made under this Act for the appointment of a receiver.

FIRST SCHEDULE

Form I

APPLICATION FOR REGISTRATION OF ADDRESS FOR SERVICE OF LEGAL DOCUMENTS

To the Registrar of Lands of.....

I (name in full and address) apply under section 6 of the Mortgage Act for registration in or in continuation of the folio (or folios) specified in B below of the address specified in A below as the address for service on me of legal documents in any hypothecary action to enforce any mortgage registered in the folio or folios specified in B below. Particulars of the instrument under which I derive title are given in C below.

A

Address/or for Service

(Name of person to whom legal documents are to be sent. This person may be the applicant or another person.)

(Full postal address in Sri Lanka.)

e.g., H. John Perera,
No. 18, Maliban Street,
Pettah, Colombo.

[section 6]

Folio (or folios) in which the Address is lobe registered

Volume :
Folio :
Volume :
Folio ;

C

Particulars of Instrument under which Applicant derives Title

- (1) Number and date of deed :
(2) Name of attesting notary :
(3) Volume and folio where the deed is registered :

2. I further declare that my address for service previously registered with you on in volume folio is hereby cancelled.

.1- The registration fee of Rs. is enclosed in stamps.

(Signature of applicant or agent.)*

* Agent means an agent authorized in writing by the applicant or attorney-at-law or notary public.

[Sections 9 and

Form 2

10]

NOTICE OF HYPOTHECARY ACTION

In the District Court of

Action No.Plaintiff/s.
vs.
.....-Defendant/s.

*Nameofcach T O * of (registered address).
person to

whom notice is Notice is hereby issued to you in terms of section 9(1)/9(2) of the Mortgage Act of the above action instituted
issued, upon a mortgage of the land/s described in the Schedule hereto.

Registrar.

Schedule

(Description of Land/s.)

[Section 34.]

Form.3

NOTICE

In the District Court of.....

Action No.Plaintiff/s.
vs.
.....Defendant/s.

Notice is hereby given -

(a) that the plaintiff in the above action has made application under section 34 of the Mortgage Act for a declaration that in the event of decree being entered for the sale of the land described in the Schedule hereto, the court will order the removal of all persons whomsoever who may resist the delivery of possession of the land to the purchaser at the sale ;

MORTGAGE

(h) that any person claiming to be entitled to possession of the land or any portion thereof shall be entitled to make application within two months to this court under section 35 of the Act to be added as a party to the above action and to secure an adjudication upon his claim ;

(-<) that a plan of the land has been filed of record in (his court) and is available for inspection by any person interested.

.....
Registrar.

Schedule

(Description of land.)

[section 53]

Form 4

CONVEYANCE

(Title.)

To all to whom these presents shall come, greeting.

Whereas by a mortgage bond dated....., and bearing number and attested bynotary public, and registered in the..... District I .and Registry at foliothe payment toof the sum ofrupees was secured with interest by mortgage of the property hereinafter described and hereby conveyed :

And whereas by a decree entered in action No.of the District Court of on the day of it was ordered and decreed that the defendant in the said action do pay to the plaintiff in the said action forthwith the sum ofrupees (Rs. being the aggregate amount of the principal, interest, and costs due in respect of the said mortgage bond. together with interest thereon at the rate of per centum per annum from the date of the said decree until payment : and that in default of payment of the said sum. interest, and costs within (stale period) from the date of the said decree the said property be sold :

And whereas an order for the sale of the said premises was subsequently given by the court to the Fiscal/* -under section 50 of the Mortgage Act :

And whereas after due notice and publication in manner by law prescribed the said property was exposed to public sale on theday of 19..... by acting under the authority of the said Fiscal/* and was sold to as the highest bidder at the said sale for the sum ofrupees ;

And whereas the said (purchaser) has duly paid the whole of the said purchase money and thus became entitled to a conveyance of the said property (or, where the plaintiff is purchaser) and whereas the said (purchaser) has been allowed the amount of the purchase money (or as the case may be) in reduction of his claim, and has produced the order of court, copy whereof is hereunto annexed, and has thus become entitled, &c. :

And whereas the said court by an order dated theday of 19 .copy of which is hereunto annexed, has duly confirmed the said sale :

Now these presents witness that the said Fiscal/* in consideration of the said sum of rupees so paid by (or credited to) the said (purchaser) as aforesaid, the receipt whereof the said Fiscal/* doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign unto the said (purchaser), his heirs, executors, administrators, and assigns, the property described in the Schedule hereto. To have and to hold the same with their and every of their appurtenances to him, the said (purchaser), his heirs, executors. administrators, and assigns for ever.

In witness whereof the said Fiscal/* -hath hereunto subscribed his name at thisday of 19.

(Signature).....

Witnesses :

Schedule

(To contain a description of the property conveyed.)

*Strike out what is inapplicable.

[section 55]

Form 5

In the District Court of.....

No.....

Whereas the land known as situated at-and more fully described in the Schedule hereto was, under the decree in the above action, sold toof hereinafter referred to as "the purchaser" and whereas it has been reported to this court that the Fiscal was obstructed in attempting to put the purchaser or some other person on his behalf in possession of such land in terms of the order made under this action and dated theday of

MORTGAGE

Now, therefore, this is to direct ALL PERSONS WHOMSOEVER forthwith to yield up possession thereof, without obstruction or resistance, to the purchaser or such other person upon pain of suffering the penalties prescribed in that behalf in section 55 of the Mortgage Act.

By Order of the Court,

Registrar.

Schedule
(Description of Land.)

**SECOND SCHEDULE
Form 6**

[Section 69.] I/ We* of -do hereby, in terms of section of the Mortgage Act, mortgage the land described in the First Schedule hereto to of an approved credit agency as defined in that Act, as security for the payment of all sums due and owing or which may be or become due and owing from me/us* to the said agency/on* account of the matters and transactions mentioned/(or)/* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We' hereby declare that the title deeds of the land aforesaid have been deposited with the agency in terms of the said section.

(Signature)

+(Where not notanally executed.) *Signed by the aforesaid of.....in the presence of .(Manager/fDirector/+Prescribed Officer) and of (1).....and (2)(witnesses).

(Signatures)

Firsi Schedule
(Description of Land.)

Second Schedule
(Matters or transactions referred to/(or)/instrument referred to.)
* Delete if inapplicable-

**THIRD SCHEDULE
Form?**

[Section 73.] I/We*, of do hereby mortgage the shares described in the First Schedule hereto to of an approved credit agency within the meaning of the Mortgage Act as security for the payment of all sums due and owing from me/ us* to the said agency/on* account of the matters and transactions mentioned/(or)* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the share certificates relating to the said shares have been deposited with the said agency and that I/We* have executed a transfer/transfer in blank* of the said shares and delivered such transfer to the said agency.

(Signature)

Signed by the said of in the presence of (I) and (2)(witnesses).

(Signature)

First Schedule
(Description of shares.)

Second Schedule
(Matters or transactions referred to/(or)/instrument referred to.)
*Delete if inapplicable.

[Section 81.] I/We* of hereby mortgage my/our* rights under the policy of life insurance mentioned in the First Schedule hereto to of an approved credit agency within the meaning of the Mortgage Act as security for the payment of all sums due and owing or which may be or become due and owing from me/us* to the agency/on* account of the matters and transactions/(or)/*under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the policy has been assigned to the said agency by way of mortgage and has been deposited with the agency.

(Signature)

Signed by the said.....of..... in the presence of (1).....and (2)(witnesses.)

First Schedule
(Particulars of Policy.)

Second Schedule
(Matters or transactions referred to/ (or)/instrument referred to.)
* Delete if inapplicable.