

CHAPTER 3. No. 3.

PETTY CIVIL COURTS.

AN ORDINANCE RELATING TO PETTY CIVIL COURTS.

[1st May, 1911.]

3-
1943.
2-1949.
Commence-
ment.

1. This Ordinance may be cited as the Petty Civil Courts Ordinance. Short title.

2. In this Ordinance and in all rules under this Ordinance— Interpre-
tation.
Ord. 9-1943,
s. 2

“ action ” means any proceeding commenced by the issue of a summons out of a court;

“ bailiff ” means the bailiff of the district and his assistants;

“ clear days ” means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day;

“ Clerk ” means the Clerk of the Court or person lawfully acting as such Clerk, and includes Assistant Clerk;

“ Court ” means a Petty Civil Court under this Ordinance;

“ district ” means the district in and for which a Court is held;

“ foreign court ” means the court of a district into which process is issued from another court;

“ foreign district ” means a district other than the district from the Court of which the process is issued;

“ hereditament ” includes both a corporeal and incorporeal hereditament, and a building shall be within the definition notwithstanding that it is moveable property;

“ home court ” means the Court from which process is originally issued;

“ Judge ” means the Judge of the Court or any person lawfully acting as such Judge;

“ judgment ” means the final decision of the Court in any action;

“ land ” includes messuages, tenements and hereditaments of any tenure, and a building shall be within the definition notwithstanding that it is moveable property;

“ landlord ” in relation to any land, means the person entitled to the immediate reversion of that land or, if the property therein is held in joint tenancy, any of the persons entitled to the immediate reversion;

“ party ” means party to an action or a person served with notice of or in any action, and includes a body politic or corporate;

“ prescribed ” means prescribed by the rules made under this Ordinance for the time being in force; and where no such rule applies, then shall mean according to the practice and forms in use in the Courts heretofore holden in the said respective districts;

“ proceeding ” means any proceeding in a court other than an action;

“ process ” includes summons, notice, execution, summons under the Debtors Ordinance, and any other step in any action or founded on any judgment in an action;

“ return day ” means the day appointed in any summons or proceeding for the appearance of the defendant or any other day fixed for the trial of any action or matter;

“ rules of court ” includes forms;

“ trial ” means the hearing of any action in court.

Districts.

3. The several Petty Civil Courts heretofore held shall be subject as herein is provided, continue to be held under

the provisions of this Ordinance; and it shall be lawful for the Governor, by proclamation, to divide the Colony, or any part thereof, into districts and to order that a Court shall be held in each or any of such districts, and also to appoint or change the place of holding of any such Court, or to consolidate any two or more of such districts, or to order that the holding of any such Court be discontinued, and also to declare by what name and at what place each such Court shall be held.

4. Subject to the powers of the Governor by proclamation otherwise to appoint, a Court shall be held in Port-of-Spain for the magisterial district of St. George West; and such Court shall be designated the Port-of-Spain Petty Civil Court.

Port-of-Spain Court.

5. The Courts shall hold public sittings at such places and on such days as the Governor may from time to time, by proclamation, appoint, and, until otherwise so appointed, at the places and times at which the same Courts respectively have hitherto been held: Provided that it shall be lawful for the Judge at his discretion to adjourn any Court to any day or hour that he may deem convenient.

Sittings.

Adjournment.

6. The offices of the Courts shall be open daily, except on ~~Sunday, Christmas Day, Good Friday and the day there-
after, Easter Tuesday, and any other public holiday,~~ from the hour of nine o'clock in the morning to ~~four~~ ^{four} o'clock in the evening for the granting of summonses, ~~issuing~~ ^{issuing} of writs of execution, and for all other necessary business of the Court. *Carrying out of all other business of the Court.*

Office hours.

Holidays.

4/3/75

7. The Magistrates shall be the Judges of the Courts in their respective districts. Whenever more than one Magistrate is assigned to a district, such Magistrates shall have concurrent jurisdiction as Judges of the Courts in that district.

Judges and jurisdiction.

8. (1) The Clerk of the Peace for the magisterial district of St. George West shall, for the purposes of this Ordinance and of the rules thereunder, be the Chief Clerk of the Port-of-

Clerks

Spain Petty Civil Court; and the expressions "Chief Clerk" and "Clerk" in such Ordinance and rules shall, as regards the said Court, include the said Clerk of the Peace and his assistant clerks.

(2) The several Clerks of the Peace and their assistant clerks shall be Clerks of the Petty Civil Courts of their respective districts.

Deputies.

9. It shall be lawful for the Governor to appoint a deputy or deputies to discharge the duties of any Judge, clerk or bailiff in case of illness or absence or for other reason.

General
jurisdiction.
Ord. 9-1943,
s. 5.

10. (1) A Court shall have jurisdiction to hear and determine any action founded on contract or on tort where the debt, demand or damage claimed is not more than two hundred and forty dollars, whether on balance of account or otherwise.

(2) A Court shall have jurisdiction to hear and determine any action where the debt or demand claimed consists of a balance not exceeding two hundred and forty dollars after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand.

(3) A Court shall have jurisdiction to hear and determine any action for the recovery of any penalty, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force, if—

(a) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court; and

(b) the amount claimed in the action does not exceed two hundred and forty dollars:

Provided that for the purposes of this section the expression "penalty" shall not include a fine to which any person is liable on conviction on indictment or on summary conviction.

(4) In any enactment relating to the jurisdiction of the Court or of a Magistrate in the exercise of his

jurisdiction, where the limit of the amount specified in respect of any matter within the jurisdiction and discretion of the Court or Magistrate is less than two hundred and forty dollars, such amount shall be increased to two hundred and forty dollars, and the Court or Magistrate shall have and exercise jurisdiction accordingly.

11. (1) Where a plaintiff has a cause of action for more than two hundred and forty dollars in which, if it were not for more than two hundred and forty dollars, a Court would have jurisdiction, the plaintiff may abandon the excess, and thereupon a Court shall have jurisdiction to hear and determine the action, so however that the plaintiff shall not recover in the action an amount exceeding two hundred and forty dollars.

Abandonment of part of claim to give Court jurisdiction.
Ord. 9-1943
s. 3.

(2) Where a Court has jurisdiction to hear and determine an action by virtue of this section, the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly.

12. (1) A Court shall have jurisdiction to hear and determine any action for the recovery of land (whether or not the relation of landlord and tenant exists or has existed between the parties) where neither the value of the land in question nor the rent (if any) payable in respect thereof exceeds the sum of two hundred and forty dollars by the year.

Jurisdiction in actions for the recovery of land.
Ord. 9

(2) This section shall be without prejudice to any jurisdiction which would have been possessed by any court if this section had not been passed.

(3) This section shall have effect subject to any law from time to time in force for regulating rentals.

13. (1) Every lessee to whom there is delivered any summons issued from a Court for the recovery of land demised to or held by him, or to whose knowledge any such summons comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver, and if he fails so to do he shall be liable to forfeit to the person of whom he holds

Lessee to give notice of summons for recovery of land.
Ord. 9-1943
s. 3.

the land an amount equal to the value of three years improved or rack rent of the land, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

(2) In this section "lessee" includes under-lessee and any other tenant.

Transfer of actions for the recovery of land to the Supreme Court.

Ord. 9-1943, s. 3.

14. (1) Where an action for the recovery of land is commenced in a Court, the defendant or his landlord may within such time as may be prescribed by rules made under this Ordinance, apply to a Judge of the Supreme Court at Chambers for a summons to the plaintiff to show cause why the action should not be transferred to the Supreme Court on the ground that the title to land of greater annual value than two hundred and forty dollars would be affected by the decision in the action or that some important question of law or fact is likely to arise.

(2) On the hearing of any such summons, the Judge of the Supreme Court, if satisfied that such a title as aforesaid would be so affected or that some important question of law or fact is likely to arise as aforesaid, may order that the action be transferred to the Supreme Court.

(3) Where, in an action for the recovery of land commenced in a Court, no application is made to the Supreme Court in accordance with this section, or where such an application is made but no order is made for the transfer of the action, the Court shall have jurisdiction to hear and determine the action notwithstanding the provisions of this Ordinance relating to actions in which the title to hereditaments comes in question.

(4) When an action is transferred from a Court to the Supreme Court in accordance with this section, the costs of the whole proceedings both before and after the transfer shall be in the discretion of the Supreme Court.

Jurisdiction where title in question.

Ord. 9-1943, s. 3.

15. A Court shall have jurisdiction to hear and determine any action in which the title to any hereditament comes in question, being an action which would otherwise be within the jurisdiction of the Court—

(a) in the case of an easement or licence, if neither

the value nor the rent (if any) of the hereditament in respect of which the easement or licence is claimed, exceeds the sum of two hundred and forty dollars by the year; or

(b) in any other case, if neither the value of the hereditament in question nor the rent (if any) payable in respect thereof exceeds the sum of two hundred and forty dollars by the year.

16. For the purpose of executing a warrant to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

Execution of warrants of possession.
Ord. 9-1943,
s. 3.

17. (1) Save as expressly provided in this Ordinance, a Court shall not have jurisdiction to hear and determine any action for the recovery of land, or any action in which the title to any hereditament or any toll, fair market or franchise is in question.

Limitation on the jurisdiction of the Courts.
Ord. 9-1943,
s. 3.

(2) Notwithstanding the preceding provisions of this Ordinance, a Court shall not have jurisdiction—

(a) to grant any equitable relief or remedy or any judgment or order in the nature of a mandamus or injunction;

(b) to hear and determine any action for libel, slander, slander of title, seduction, breach of promise of marriage, infringement of a patent or merchandise mark or copyright, malicious prosecution, false imprisonment, or breach of a statutory duty or any action or proceeding by way of replevin or any action in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or any action in which the validity or legality of anything done in the execution or discharge of any public office or employment, or any liability or alleged liability arising from the holding of any such office or employment, is in dispute.

(3) If it shall be made to appear in the course of any action or proceeding that such action or proceeding or any claim therein is not within the jurisdiction of the Court, the Court shall order such action, proceeding or claim,

as the case may be, to be struck out with or without costs as to the Judge shall seem just.

Cases triable
by
Magistrates.
Ch. 3. No.
3-1940, s. 13.

18. In case any action shall be brought in respect of the recovery of any money by way of wages, or for damages for any alleged assault, or for the detention or conversion of goods, or for trespass to enclosed lands, or in respect of any other claim or cause of action, and in the opinion of the Judge the same could have been adequately dealt with by a Magistrate under the provisions of the Summary Courts Ordinance, or of any other Ordinance conferring on a Magistrate the power to award payment or damages or compensation to the plaintiff in respect of any debt or claim whatsoever, the Judge shall, unless for good cause it appears to him otherwise just, strike out such action at the hearing, and such striking out shall be without prejudice to any right of the plaintiff to proceed before a Magistrate, if he shall be entitled to do so: Provided that it shall not be deemed good cause for allowing such action to continue, that the time had gone by for commencing proceedings in the Court of summary jurisdiction at the commencement of the action.

Jurisdiction
as to
defendants.
Ch. 3. No.
3-1940, s. 14.

19. Any person may, subject to the provisions of this Ordinance, be sued in the Court of the district in which he resides or carries on business; and by leave of the Judge, but not otherwise, any person not resident within such district may be sued in the Court of such district in respect of any debt contracted by him within the district or for damages in respect of any wrongful act committed therein or in respect of any breach of any contract made or to be performed therein.

Trustees,
executors, or
adminis-
trators.
Ch. 3. No.
3-1940, s. 15.

20. Any trustee, executor, or administrator may sue or be sued under this Ordinance in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court.

Partners.
Ch. 3. No.
3-1940 s. 16.

21. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and it shall be sufficient if any of such co-partners be served with process, and judgment may

be obtained and execution issued against one or all the persons liable as such co-partners.

22. (1) Any person under the age of twenty-one years may prosecute any action under this Ordinance for any sum of money not greater than two hundred and forty dollars which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age; and any person above the age of fourteen and under the age of twenty-one may be sued under this Ordinance for any debt not exceeding two hundred and forty dollars contracted for necessities, in the same manner as if such person at the time of contracting such debt had been of full age, and the burden of establishing that the person contracting such debt was at the time of contracting the same, under the age of fourteen years shall be on the defendant setting up the same.

Infants.
Ch. 3. No.
3-1940, ss.
17, 18.

(2) Infants may sue as plaintiffs by their next friends, and may defend by their guardians, but nothing herein contained shall affect the right or liability of any infant to sue or be sued under the preceding subsection.

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

Joinder of
plaintiffs.
Ch. 3. No.
3-1940, ss. 19,
20 & 21.

(2) The plaintiff may, at his option, join as parties to the same action all or any of the parties severally, or jointly and severally, liable on any one contract, including

Joinder of
defendants.

parties to bills of exchange or promissory notes; and every such person against whom judgment shall have been obtained under this Ordinance, and who shall have satisfied such judgment, shall be entitled to demand and recover contribution from any other person jointly liable with him.

Idem.

(3) All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative; and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Joinder of
causes of
action.

24. (1) Subject to the provisions of this Ordinance and the rules thereunder, the plaintiff may unite in the same action several causes of action and—

Ord. 9-1943,
s. 4.

(a) claims by or against husband and wife may be joined with claims by or against either of them separately; and

(b) claims by or against an executor or administrator as such may be joined with claims by or against him personally, if they are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator; and

(c) claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

(2) Except by leave of the Court—

(a) claims by a trustee in bankruptcy as such shall not be joined with any claim by him in any other capacity; and

(b) no cause of action shall be joined with an action for the recovery of land except claims for mesne profits or arrears of rent or double value of the land claimed or any part thereof or for damages for breach of any contract under which it is held or for any wrong or injury to it, or for payment of any principal money or interest secured by a mortgage or charge.

(3) If, at any time, it appears to a Judge that any causes of action united in one action cannot be

conveniently tried and disposed of together, he may order separate trials, or may exclude any cause of action and order any consequential amendments to be made and may make such order as to costs as may be just.

25. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in one or more Courts.

Division
of causes
of action.
Ord. 9-1943,
s. 5.

26. Any demand not exceeding two hundred and forty dollars which is claimed as the balance of a partnership account or the amount or part of the amount of a distributive share under an intestacy or of any legacy under a will may be sued for in an action.

Partnership
or intestacy
or legacy.
Ch. 3. No.
3-1940,
s. 24.

27. (1) Where a sole plaintiff or defendant, or one or more of several plaintiffs or defendants, shall die before judgment, the action shall not abate if the cause of action survive or continue.

Death of
parties.
Ch. 3. No.
3-1940,
s. 25.

(2) Where one or more of several plaintiffs or defendants shall die after judgment, proceedings thereon may be taken by the survivors or survivor or against the survivors or survivor, without leave of the Court.

28. Save as otherwise expressly provided, all applications respecting any action or proceeding shall be made in open Court to the Judge, and, except where the Judge thinks fit to permit the same to be made *ex parte*, shall be made on notice to the party to be affected thereby:

Applications,
Ch. 3. No.
3-1940,
s. 26.

Provided that applications to sue any person not resident in the district under section 19 shall not be made in open Court, but such applications may be made in writing in the prescribed form, and a fee of twelve cents shall be payable in respect of the filing of every such application.

29. (1) All summonses and other process shall be in the prescribed form, but no process which, in the opinion of the Judge, substantially contains the prescribed information, details, and particulars shall be deemed invalid or insufficient by reason of any want of form or variation in form.

Forms of
proceedings.
Ch. 3. No.
3-1940, ss. 27,
28 & 29.

(2) In the event of any process being, in the opinion of the Judge, insufficient or substantially defective, it shall

Amendment
of process.

be lawful for the Judge, in his discretion, on such terms (if any) as to postponement, costs, and otherwise as he shall think fit, to amend the same or to permit the party in default to amend the same: Provided that such power of amendment shall not be exercised where the Judge is of opinion that the omission or irregularity has been intentional, for purpose of delay, evasion, or deception, or otherwise not in good faith.

Affidavits.

(3) All affidavits for use in a Court may be sworn either before a Commissioner of Affidavits or before the Judge or before a Clerk.

General jurisdiction at trial.

30. At the trial the Judge shall try the whole matter of the action and give judgment thereon, or make any order or give any direction he may consider necessary to enable him to give a final judgment upon a day to which the trial may be adjourned, and also may make such order as to costs as he may think fit.

Time for payment.

Instalments.

31. The Judge at the hearing, or, by consent of the parties, the Clerk in entering up judgment by confession or for non-appearance to a default summons under the rules, may make orders concerning the time or times, and by what instalments (if any) any debt or damages or costs for which judgment shall be obtained shall be paid; and all such moneys shall be paid into Court unless otherwise directed, and in case of default made in payment of such judgment or of any such instalments, execution may issue against the person making such default in respect of the balance of the debt payable at the time of such default in all respects as if no order for payment by instalments had been made.

Judgment to be final.

32. Every order and judgment of any Judge made under any of the provisions of this Ordinance shall, subject as in sections 34 and 35 of this Ordinance provided, and subject to the provisions of section 34 of the Judicature Ordinance, be final and conclusive between the parties; but the Judge shall have power at his discretion to strike out the action with or without costs and without giving any other judgment thereon, in any case in which satisfactory proof shall not have been given to him entitling either the plaintiff or

the defendant to judgment, but such striking out shall not be a bar to any fresh action.

33. (1) Without prejudice to the provisions of section 34 of the Judicature Ordinance, the Supreme Court or a Judge thereof may order the removal to the Supreme Court, by writ of certiorari or otherwise, of any proceedings commenced in a Court, other than proceedings in any such action as is referred to in section 10 being an action in which the sum claimed is forty-eight dollars or less. Certiorari.
Ord. 9-1943,
s. 6.

(2) When any proceedings are removed into the Supreme Court under this section, the costs of the whole proceedings both before and after removal shall be in the discretion of the Supreme Court.

(3) Any such removal shall be upon such terms as to payment of costs, giving security or otherwise as the Supreme Court or a Judge thereof thinks fit to impose.

34. The Judge shall have power, on application made on notice, in his discretion to set aside any judgment pronounced by him and grant a new trial of any action tried by him on any of the grounds on which the Supreme Court may grant a new trial of any action tried in such Court, and on such terms as to costs or security for costs, amendment, particulars, the payment of money into Court, and otherwise, as he shall deem just. And the Judge may, on sufficient cause, in his discretion at any time, on application *ex parte*, stay execution for such time as he shall think fit to permit of any notice being given or of any other application being made on notice. New trial.

Stay of execution.

35. (1) Without prejudice to section 34 of the Judicature Ordinance, there shall be a right of appeal to the Full Court from any judgment or order in any action under this Ordinance, not being any action referred to in section 10 in which the sum claimed is forty-eight dollars or less. Appeals.
Ord. 9-1943,
s. 7.

(2) In any case in which an appeal lies under this section, the Judge shall make a note—

- (a) of any question of law raised at the hearing; and
- (b) of the evidence given, and

(c) of his decision thereon and of his determination of the proceedings.

(3) The rules of practice and procedure governing appeals to the Full Court in civil matters shall apply to appeals under this section.

(4) Upon notice of appeal being filed, the Registrar of the Supreme Court shall notify the Judge of the Petty Civil Court, and the Judge shall forthwith send to the Registrar of the Supreme Court a copy of the record of the proceedings.

Defence and counter-claim by defendant.

Ord. 2-1949, s. 2.

36. (1) The defendant may, by notice of special defence or by special leave of the Judge on such terms as the Judge may think fit, at the day of hearing set up any special defence, or, set-off or set up by way of counterclaim against the claims of the plaintiff, any claim for an amount not exceeding two hundred and forty dollars, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross-action, so as to enable the Court to pronounce final judgment upon the claim and cross-claim. The Judge may at his discretion adjourn any hearing to admit of a claim and set-off or counter-claim being duly heard together, and may require the defendant to deliver written particulars of any such alleged set-off or counter-claim. And if the original claim is stayed or discontinued or dismissed, the defendant shall be at liberty either to withdraw any set-off or counter-claim preferred under the provisions hereof without prejudice to any further action by him in respect thereof, or to proceed with the trial of the same.

(2) Unless special leave has been given as above mentioned, no evidence in support of any ground of defence or set-off to or counterclaim against any claim whatever involving any allegation of fact beyond a denial of the facts necessary to entitle a plaintiff to judgment shall be admitted at the hearing of any action, unless the prescribed notice of such defence or set-off or counterclaim has been given by the defendant in the prescribed manner.

(3) A defendant shall not be at liberty for the purpose of a set-off or counter-claim to split any alleged claim

for an amount due to him from the plaintiff of a greater sum than two hundred and forty dollars, but he may abandon any excess thereof over two hundred and forty dollars. But if the defendant satisfies the Judge at the hearing that the plaintiff is indebted to him in respect of a claim in a sum greater than two hundred and forty dollars, it shall be lawful for the Judge in his discretion to stay execution on the judgment against the defendant for such time as he may deem sufficient to enable the defendant to take proceedings to recover the amount of such claim from the plaintiff in due course of law, or he may, if the plaintiff proves his case, stay execution for such time as he may think fit to enable the defendant to proceed in like manner.

37. (1) Any party may appear at the hearing to conduct his action in person or may be represented by a barrister or solicitor. No costs shall be granted in respect of any appearance or other services by a barrister in an action in which the sum claimed is forty-eight dollars or under.

Appearance
of parties
and
advocates.

(2) Any person may appear and conduct the case of his wife or child or servant being a member of his household.

(3) Subject as aforesaid no person, not being a barrister or solicitor duly retained, shall be heard on behalf of any party to any action or other proceeding.

38. (1) Either of the parties to any action or other proceeding under this Ordinance may obtain from the Clerk summonses for witnesses to appear at the hearing of the action or proceeding and give evidence, or to give evidence and produce any books, deeds, papers, writings, or articles in their possession or control.

Summonses
to witnesses.

(2) Summonses to witnesses may, by leave of the Judge, be served by the party applying for the same or by his solicitor or by someone in the permanent or exclusive employment of the party or his solicitor. It shall be sufficient if such summons be served a reasonable time before the return day.

Service of
summonses.

(3) Every person on whom any summons shall have been served and who shall refuse or neglect without sufficient cause to appear and give evidence, or to give evidence and produce any books, deeds, papers, writings,

Refusal to
give evi-
dence, etc.

or articles required by such summons to be produced, and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine not exceeding twenty-four dollars as the Judge shall direct, and the whole or any part of such fine may, in the discretion of the Judge, be paid to the party injured by such refusal or neglect or into the Treasury for the use of the Colony.

Power to administer oath to and examine witnesses.

39. On the hearing or trial of any action or other proceeding under this Ordinance, the parties thereto and all other persons may be examined (either on behalf of the plaintiff or the defendant) on oath. Such oath shall be administered by or in the presence of the Judge.

Costs.

40. The awarding of costs of actions tried in Court shall be in the discretion of the Judge; and the Judge may in his discretion award to the successful party such sums actually incurred in respect of the summoning and attendances of necessary witnesses as he may think just; but subject thereto the costs if awarded shall be computed by the Clerk according to the prescribed scale.

Costs on judgment by confession, or in undefended cases.

41. In cases in which judgment is obtained by confession or for want of appearance or defence, the costs shall be allowed as prescribed, and shall be computed by the Clerk and added to the amount of the judgment. The costs according to the prescribed scale shall be inclusive of all work done in obtaining the evidence of witnesses or taking proof of such evidence and preparing any notice, summons, particulars, or other documents and in conducting any case before the Court.

Service of process.

42. The bailiff of each district shall serve process and levy execution transmitted to him in the prescribed manner for service or levy within his district in any action commenced in the Court.

Execution.

43. (1) Execution shall be issued by the Clerk of the Court in which judgment has been obtained in the prescribed form to the bailiff of the district within which execution is to be levied, and shall be executed against the

personal chattels of the judgment debtor, except the tools or implements of his trade to the value of twenty-four dollars.

(2) No goods which shall be taken in execution shall be sold until five days at the least next after the day on which such goods shall have been taken, and such goods shall be sold by public auction, and three days' notice at least of the intended sale of such goods shall be given by affixing such notice in some conspicuous place in the office of the Court, and all such sales shall be made for cash only.

Sale of goods taken in execution.

(3) A Judge may, by order, suspend the issue or enforcement of execution in any case. And when order has been made under the provisions of section 34 to rehear a case, such order shall operate as a stay of execution pending the rehearing, and when order has been made under the provisions of section 31 for the payment of any debt by instalments, such order shall operate as a stay of execution for such time as such instalments continue to be regularly paid under such order.

Stay of execution.

44. Where a party against whom judgment for an amount exceeding forty-eight dollars exclusive of costs has been obtained under this Ordinance has no goods or chattels which can be conveniently taken to satisfy such judgment, the judgment creditor may apply to a Judge of the Supreme Court in Chambers for an order that such judgment be made a judgment of the Supreme Court, and such Judge, upon proof of the judgment and of the service or substituted service upon the judgment debtor of a summons to show cause why the application should not be granted, and upon an affidavit showing that the judgment debtor had an opportunity of being heard on the merits in opposition to the judgment, may order that the judgment be made a judgment of the Supreme Court, and thereupon such judgment shall have the same force and effect and be registrable in the same manner and the same proceedings may be had thereon as in the case of a judgment of the Supreme Court.

Judgment may be made a judgment of the Supreme Court in certain cases.

45. Except as in any other Ordinance provided, the Court shall have power to order the attachment of debts

Debtor's summons.

due to any person who is a debtor under a judgment of the Court, and to order the attendance of a debtor for examination as to his property and as to debts owing to him.

Procedure in attachment.

46. For the purpose of exercising the powers in the last preceding section conferred, the Judge shall have and exercise, to the extent in that section provided, the powers for the time being exercisable by the Supreme Court or a Judge thereof in respect of discovery and attachment of debts according to the rules and orders of the Supreme Court relating to the attachment of debts, or so much of the same as is applicable to the Judge of the Petty Civil Court, and such rules and orders shall apply *mutatis mutandis* to all proceedings taken for the attachment of debts in a Petty Civil Court under the provisions hereof: Provided that no debt shall, under the provisions of this section, be attachable in any proceeding to a greater extent than is sufficient to satisfy the debt or damages and costs recoverable in such proceeding against the debtor.

Arbitration.

47. The Judge may refer any action to the arbitration of some person chosen or assented to by the parties, or may refer any question of account to the Clerk. The award of such arbitrator shall be deposited with the Clerk, and upon reading such award the Judge shall give his judgment or make such order as he may deem fit, with or without costs, including the costs of such arbitrator.

Interpleader.

48. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of the Court, or in respect of the value or proceeds thereof, by any person, it shall be lawful for the bailiff, as well before as after any action brought against him, to obtain a summons in the prescribed form without any fee for the same, calling before the Court as well the party issuing such process as the party making such claim, and the Judge shall adjudicate upon such claim and make such order between the parties in respect thereof (and of the costs of the proceedings) as to him shall seem fit, and shall also adjudicate between such parties, or either of them, and the bailiff with respect to any damage or claim or to damages arising or capable of arising out of the execution of

such process by the bailiff, and make such order in respect thereof and of the costs of the proceedings, as to him shall seem fit; and such orders shall be enforced in like manner as any order in any action brought in such Court, and shall be final and conclusive as between the parties and as between them, or either of them, and the said bailiff; and upon the issue of such summons, any action which shall have been brought in any Court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.

49. If any bailiff shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall, on summary conviction, be liable to a fine of one hundred and twenty dollars, or to imprisonment for six months, and it shall be lawful for the bailiff or any member of the Police Force in any such case to take the offender into custody (with or without warrant) and bring him before a Magistrate to be dealt with accordingly.

Assault or
obstruction
of bailiff.

50. If the bailiff or any clerk or other officer of the Court, acting under or under colour or pretence of the process of the Court, shall be charged with extortion or misconduct, or with any neglect of duty, or with not duly paying or accounting for any money levied by him under the authority of this Ordinance, it shall be lawful for the Judge to enquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just, and also, if he shall think fit, to impose such fines upon such bailiff, clerk, or other officer, not exceeding twenty-four dollars for each offence, as he shall deem adequate.

Misconduct
of officers.

51. If any person shall bring any suit in the Supreme Court in respect of any grievance committed by any clerk, bailiff, or officer of the Court under or under colour or

Actions
against
officer of
Court.

pretence of the process of the said Court, and the plaintiff shall, upon the trial of the action, not be awarded greater damages than the sum of two hundred and forty dollars, no costs shall be awarded to the plaintiff in such action unless the Judge trying such action shall certify in Court upon the record that the action was fit to be brought in the Supreme Court.

Actions for
small debts
in Supreme
Court.

Ord.9-1943,
s. 8.

52. If any action be commenced in the Supreme Court which might have been entered and tried in any Court held under this Ordinance, the plaintiff may have judgment in such action for the amount recovered by him if successful, but without any costs; and if the defendant succeeds he shall be entitled to his costs as between solicitor and client, unless in either case the Judge before whom the action was tried shall certify upon the record that the action was a fit and proper one to be brought in the Supreme Court.

Enforcement
of fines,
penalties,
and
forfeitures.

53. Payment of any fine, penalty, or forfeiture imposed by any Judge under the authority of this Ordinance may be enforced upon the order of the Judge in like manner as payment of any debt adjudged in the Court, or the Judge may order the same to be paid forthwith, or in default of such payment may commit the offender to prison for any period, with or without hard labour, in accordance with the scale prescribed by section 65 of the Summary Courts Ordinance, unless the said fine, penalty, or forfeiture be sooner paid.

List of
unclaimed
moneys.

54. The Clerk in each district shall, in the months of January, April, July, and October in each year, make out a correct list of all sums of money belonging to suitors in the Court which shall have been paid into Court, and which shall have remained unclaimed for three months before the first day of the said months of January, April, July, and October respectively, specifying the names of the parties for whom or on whose account the same was so paid into Court; and a copy of such list shall be put up and remain during business hours in some conspicuous part of the office of the Court; and all sums of money which shall have been paid into Court to the use of any suitor or suitors therein and which shall have remained unclaimed for the

period of six months after the same shall have been so paid into Court, shall be paid into the Treasury, and shall, if unclaimed for the period of three years after the same shall have been so paid into the Treasury, be applicable as part of the general revenue of the Colony and shall be carried to the account of such revenue; and no person shall be entitled to claim any sum which shall have remained unclaimed for three years.

55. Rules may be made in like manner as rules may be made under and for the purposes of the Judicature Ordinance for giving effect generally or specially to the purposes of this Ordinance, and for conferring any appropriate powers ancillary to the exercise of any jurisdiction conferred by this Ordinance, and for regulating the exercise of any such jurisdiction and ancillary powers, and for prescribing generally or specially the practice and procedure of the Courts, including the forms of summonses, notices, particulars and other process, and the duties of the officers of the Courts, and the fees to be taken therein, and the costs to be allowed in respect of proceedings in the Courts.

Rules.
Ord. 9-1943,
s. 9.
Ord. 2-1949,
s. 3.

56. All rules of court made prior to the 22nd of January, 1949, shall remain in force as though they were made under the provisions of the preceding section.

Saving of
existing
rules.
Ord. 2-1949,
s. 4.

57. Notwithstanding anything contained in this Ordinance or in the rules made thereunder, a Judge shall have power, in any proceeding in which good cause appears to him for so doing, either to remit any fees payable therein or to suspend payment of any fees until the conclusion of such proceeding, in which case he may then direct such fees to be paid as costs by any party to the proceeding by whom he has power to order costs to be paid.

Judge may
suspend
payment of
fees.

58. Any person not being a solicitor of the Supreme Court or a clerk in the permanent employ of such solicitor who shall prepare for reward any notice, summons, particulars, or other process or documents in any action or for use in any Court held under this Ordinance shall be liable, on summary conviction, before a Magistrate or

Unqualified
persons
preparing
documents,
etc., for
reward.

Justice, to a penalty of ten dollars for the first offence, and of forty-eight dollars for any subsequent offence, and it shall be lawful for the Judge in his discretion, on its being made to appear in the course of any trial before him that any person present in Court has been guilty of such offence, summarily to proceed to enquire into the guilt of such person, and if he shall convict such person to impose such penalty as aforesaid in the same manner as if he were sitting as a Magistrate in a court of summary jurisdiction and such person had been duly summoned before him to answer such offence: Provided that a conviction or acquittal of any such person so dealt with shall be a bar to any subsequent proceedings against such person in respect of the same offence.