

COURT OF FIRST INSTANCE ORDINANCE

Repealed by Act.2004-11 as from 1.9.2004

Principal Ordinance

Ord. No. 1960-03	<i>Commencement</i>	1.9.1960
	<i>Enactment</i>	17.3.1960

With which is incorporated
Ord. **1960-04**

	Amending enactments	Relevant current provisions	Commencement date
Ords.	1960-26	ss.4(2) and 5	
	1962-02	ss.4(2), 13(1),17(1), 23 and 52	
	1972-01	s.8(1)	
	1972-06	s.24	
	1975-22	s.8A	
	1979-01	ss.8(1) and (2), 10(1), 11, 12, 14(1),15(2), 19(1), 24, 28, 37, 51(1) and 53	
	1983-48	ss.4(2) and (3)	
	1988-35	ss.55(f) and 55A	15.12.1988

English sources

Employers and Workmen Act 1875 (38 & 39 Vict. c.90)
County Courts Act 1934 (24 & 25 Geo. 5 c.53)
County Courts Act 1955 (4 & 5 Eliz. 2 c.8)
County Courts Act 1959 (7 & 8 Eliz. 2 c.22)

ARRANGEMENT OF SECTIONS.

Section

1. Short title.
2. Interpretation.
3. Establishment of Court of First Instance.
4. Judge of the court.
5. In case of absence, etc., of judge.
6. Seal of court.
7. *Repealed.*
8. Civil jurisdiction.
- 8A. Jurisdiction as to counterclaims.
9. Demands not divisible.
10. Abandonment of part of claim to give court jurisdiction.
11. Partnership, intestacy, etc.
12. Money recoverable by statute.
13. Jurisdiction in actions for recovery of land.
14. Transfer of actions of contract or tort from court to Supreme Court.
15. Transfer of actions of contract or tort from Supreme Court to court.
16. Transfer from Supreme Court of actions of tort where plaintiff impecunious.
17. Transfer of actions for recovery of land from court to Supreme Court.
18. Transfer of actions for recovery of land from Supreme Court to court.
19. Costs of actions of contract or tort commenced in Supreme Court which could have been commenced in court.
20. Costs in cases transferred from one court to the other.
21. Power of judge to refer to referee.
22. Avoidance of multiplicity of proceedings.
23. Practice and procedure.
24. Minors.
25. Payment of judgments and orders.
26. Execution of judgments or orders for money.
27. Execution of orders for payment by instalments.
28. Goods which may be seized.
29. Disposal of bills of exchange, etc., seized.
30. Custody of goods seized.
31. Period to elapse before sale.
32. Method of selling goods.
33. Execution to be superseded on payment.
34. Times of application to be entered in records.
35. Issue and execution of orders of committal.
36. Claims for rent where goods seized in execution.
37. Irregularity in executing warrants.
38. Replevins to be granted by clerk of the court on security being given.
39. Amount and conditions of security.
40. Interpleader by sheriff.
41. Employers and workers.

42. Mode of giving security.
43. Executors and administrators.
44. Persons jointly liable.
45. Appeals in civil cases.
46. Discretionary power of Supreme Court.
47. Powers of Supreme Court on appeal.
48. Fees and costs.
49. *Repealed.*
50. Assessors.
51. Disobedience of summons, etc.
52. Penalty for non-attendance on judgment summons.
53. Contempt.
54. Protection of judicial officers.
55. Rules of court.
56. Saving.

1960-03

Repealed

Court of First Instance

AN ORDINANCE FOR THE CONSTITUTION OF A COURT OF FIRST INSTANCE, FOR THE APPOINTMENT OF A JUDGE AND OTHER OFFICERS THEREOF AND FOR THE REGULATION OF THE JURISDICTION THEREOF AND PROCEEDINGS THEREIN.

Short title.

1. This Ordinance may be cited as the Court of First Instance Ordinance.

Interpretation.

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

“action” includes a suit and means any civil proceedings in the court which may be commenced as prescribed by plaint;

“clerk” and “clerk of the court” mean the clerk of the court appointed under the provisions of section 7;

“court” and “Court of First Instance” mean the Court of First Instance established under this Ordinance.

“hereditament” includes both a corporate and incorporate hereditament;

“judge” means the judge of the court appointed under the provisions of this Ordinance;

“judgment” includes a decree;

“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 a joint tenancy, any of the persons entitled to the immediate reversion;

“matter” includes every proceedings which may be commenced in the court as prescribed otherwise than by plaint;

“party” includes every person served with notice of, or attending, any proceedings, whether named as a party to those proceedings or not;

“prescribed” means prescribed by rules of court;

“proceedings” include both actions and matters;

“rules of court” means rules made under section 55;

“sheriff” means the Sheriff of the Supreme Court.

Establishment of Court of First Instance.

3. There is hereby established a court subordinate to the Supreme Court to be known as the Court of First Instance, which shall be held at such times and in such place as the Chief Justice may direct.

Judge of the court.

4. (1) The court shall consist of one judge who shall be called the Judge of the Court of First Instance and who shall be appointed by the Governor.

(2) No person shall be qualified for appointment as a judge of the Court of First Instance unless—

(a) he is, or has been, a judge of a court having no less jurisdiction than the Court of First Instance in some part of the Commonwealth or in the Republic of Ireland, or of a court having jurisdiction in appeals from any such court; or

(b) he is entitled to practise as an advocate in such a court and has been entitled for not less than seven years to practise as an advocate or as a solicitor in such a court.

(3) For the purposes of this section, a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) notwithstanding that—

(a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practice.

In case of absence, etc., of judge.

5. In case of the illness, absence or incapacity for any cause, of the judge the Governor may appoint some fit and proper person, whether or not such person is qualified under the provisions of section 4 to be appointed as judge of the Court of First Instance, to act in the place and stead of the judge and any person so appointed shall so far as may be necessary for the purposes of his appointment, have all the powers of the judge and all acts done by him within the scope of his appointment and when so acting shall be as valid as if done by the judge.

Seal of court.

6. The court shall use a seal of such nature and pattern as the Governor may by notice in the Gazette direct.

7. *Repealed.*

Civil jurisdiction.

8. (1) The court shall have jurisdiction to hear and determine any action founded on contract or tort where the debt, demand or damage claimed is not more than £1,000 whether on balance of account or otherwise: *(1934 c.53, s.40).*

Provided that the court shall not, except as in this Ordinance provided, have jurisdiction to hear and determine—

- (a) any action for the recovery of land; or
- (b) any action in which the title to any hereditament or to any toll, fair, market or franchise is in question; or
- (c) any action for libel, slander or seduction.

(2) The court shall have jurisdiction to hear and determine any action where the debt or demand claimed consists of a balance not exceeding £1,000 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 demand or claim.

(3) The court shall have jurisdiction, subject to such rules as may be prescribed under this Ordinance, to hear and determine any summons issued under the provisions of section 5 of the Debtors Act, 1869, in respect of any judgment or decree of the court, or of the Supreme Court, irrespective of the amount awarded by such judgment or decree.

Jurisdiction as to counter-claims.

8A. (1) Where, in any action or matter commenced in the court, any counterclaim or set-off and counterclaim of any defendant involves matter beyond the jurisdiction of the court, any party to the action or matter may, within such time as may be prescribed by rules of, or applicable in, the Supreme Court, apply to the Supreme Court for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the Supreme Court. *(1959 c.22, s.65).*

(2) On any such application the Supreme Court may, as it thinks fit, order either—

- (a) that the whole proceedings be transferred to the Supreme Court;
- (b) that the whole proceedings be heard and determined in the court;
or
- (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the Supreme Court and that the proceedings on the plaintiffs claim and the defence thereto other than the set-off (if any) be heard and determined in the court:

Provided that, where an order is made under paragraph (c) and judgment on the claim is given for the plaintiff, execution thereon shall unless the Supreme Court at any time otherwise orders, be stayed until the proceedings transferred to the Supreme Court have been concluded.

(3) If no application is made under this section within the time prescribed, or if on such an application it is ordered that the whole proceedings be heard and determined in the court, the court shall have jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary.

Demands not divisible.

(1934 c.53, s.67). 9. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in the court.

Abandonment of parts of claims to give court jurisdiction.

(1955 c.8, Sch 1). 10. (1) Where a plaintiff has a cause of action for more than £1,000 in which, if it were not for more than £1,000, the court would have jurisdiction, the plaintiff may abandon the excess, and thereupon the court shall have jurisdiction to hear and determine the action, so, however, that the plaintiff shall not recover in the action an amount exceeding £1,000.

(2) Where the 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.

Partnership, intestacy, etc.

11. It shall be lawful to recover under the process applicable to actions in the jurisdiction of the court any demand not exceeding £1,000 which is the whole or part of the unliquidated balance of a partnership account or the

amount or part of the amount of a distributive share under an intestacy or of any legacy.

Money recoverable by statute.

12. The 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— *(1934 c.53, s.41).*

- (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 £1,000:

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 by the magistrates’ court.

Jurisdiction in actions for recovery of land.

13. (1) The court shall have jurisdiction to hear and determine any action for the recovery of land where the net annual value for rating of the land in question does not exceed £150. *(1955 c.8, s.2).*

(2) For the purposes of this section the net annual value for rating of any land shall be determined as at the time when the relevant proceedings are commenced and, subject to subsection (3), by reference to the valuation list made in accordance with the provisions of the Public Health Ordinance in force at the time in question.

(3) When the property of which the value is in question is not separately valued for rating, the net annual value for rating of that property shall be for the purposes of this section the value which the valuation officer appointed under the Public Health Ordinance certifies as that at which the property would be valued for rating at the time the relevant proceedings are commenced were it to be so separately valued.

Transfer of actions of contract or tort from court to Supreme Court.

14. (1) Where there is commenced in the court any action founded on contract or tort wherein the plaintiff claims a sum exceeding £100, the defendant may, within such time as may be prescribed by rules of court, give notice that he objects to the action being tried in the court. *(1934 c.53, s.44).*

(2) Where such a notice is given, the judge shall order that the action be transferred to the Supreme Court, if—

- (a) the defendant gives security approved by the judge for the amount claimed and the costs of trial in the Supreme Court, not exceeding in the aggregate a sum of £350; and
- (b) the judge certifies that in his opinion some important question of law or fact is likely to arise.

Transfer of actions of contract or tort from Supreme Court to court.

(1934 c.53, s.45). 15. (1) In any action commenced in the Supreme Court to which this section applies, any party may at any time apply to the Chief Justice for an order that the claim and counterclaim (if any) or, if the only matter remaining to be tried is a counterclaim, the counterclaim, shall be transferred to the Court of First Instance and the Chief Justice may thereupon, if he thinks fit, order that the claim or counterclaim or both (as the case may be) be so transferred accordingly.

(2) This section applies to any action where—

- (a) the plaintiff's claim is founded either on contract or on tort and the amount claimed or remaining in dispute in respect thereof does not exceed £1,000, whether the action could or could not have been commenced in the Court of First Instance, and whether the defendant does or does not set up, or intend to rely on, a counterclaim, and whether the counterclaim (if any) is founded on contract or on tort, and whether the amount claimed on the counterclaim (if any) exceeds or does not exceed £1,000; or
- (b) the only matter remaining to be tried between the parties is a counterclaim founded either on contract or on tort and the amount claimed or remaining in dispute in respect of the counterclaim does not exceed £1,000, whether the counterclaim, if it had been an action, could or could not have been commenced in the Court of First Instance.

Transfer from Supreme Court of actions of tort where plaintiff impecunious.

(1934 c.53, s.46). 16. (1) Where any action founded on tort is commenced in the Supreme Court the defendant may, on an affidavit made by himself or by any person on his behalf showing that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff, apply to the Chief Justice for an order to transfer the action to the Court of First Instance.

(2) On any such application, the Chief Justice, unless the plaintiff satisfies him that he has such means, may, if he, having regard to all the circumstances of the case, thinks fit to do so, make an order that, unless the plaintiff within a time to be limited in the order gives security for the defendant's costs to the satisfaction of the Chief Justice, the action shall be transferred to the Court of First Instance.

Transfer of actions for recovery of land from court to Supreme Court.

17. (1) Where an action for the recovery of land is commenced in the Court of First Instance, the defendant or his landlord may, within such time as may be prescribed by rules of court, apply to the Chief Justice 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 £150 would be affected by the decision in the action. *(1934 c.53, s.49).*

(2) On the hearing of any such summons, the Chief Justice, if satisfied that such a title would be so affected, may order that the action be transferred to the Supreme Court.

(3) Where, in an action for the recovery of land commenced in the Court of First Instance, no application is made to the Chief Justice 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.

Transfer of actions for recovery of land from Supreme Court to court.

18. (1) In any action commenced in the Supreme Court to which this section applies, any party may at any time apply to the Chief Justice for an order that the action be transferred to the Court of First Instance and the Chief Justice may thereupon, if he thinks fit, order that the action be transferred accordingly. *(1934 c.53,s.50).*

(2) This section applies to any action where—

(a) the plaintiff's claim is for recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant or any person holding or claiming by, through, or under a tenant, whose term—

(i) has expired or has been duly determined by notice to quit; or

- (ii) has become liable to forfeiture for non-payment of rent; and
- (b) the action could have been commenced in the Court of First Instance.

Costs of actions of contract or tort commenced in Supreme Court which could have been commenced in court.

(1934 c.53, s.47). 19. (1) Where an action founded on contract or tort is commenced in the Supreme Court which could have been commenced in the Court of First Instance, then, subject to the provisions of subsection (3), the plaintiff, if he recovers a sum less than £1,000, shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in the Court of First Instance; so however that this section shall not affect any question as to costs if it appears to the Supreme Court that there was reasonable ground for supposing the amount recoverable in respect of the plaintiff's claim to be in excess of the amount recoverable in an action commenced in the Court of First Instance.

For the purposes of this subsection a plaintiff shall be treated as recovering the full amount recoverable in respect of his claim without regard to any deduction made in respect of contributory negligence on his part or otherwise in respect of matters not falling to be taken into account in determining whether the action could have been commenced in the Court of First Instance.

(2) Where a plaintiff is entitled to costs on the Court of First Instance scale only, the clerk shall have the same power of directing on what scale and under what column in the scale costs are to be allowed, and of allowing any items of costs, as the judge would have had if the action had been brought in the Court of First Instance.

(3) In any such action as aforesaid, whether founded on contract or tort, the Chief Justice, if satisfied—

- (a) that there was sufficient reason for bringing the action in the Supreme Court; or
- (b) that the defendant or one of the defendants objected to the transfer of the action to the Court of First Instance,

may make an order allowing the costs or any part of the costs thereof on the Supreme Court scale or on such one of the Court of First Instance scales and under such one of the columns in the scale as he may direct.

(4) *Repealed.*

(5) This section applies only to the costs of the proceedings in the Supreme Court.

(6) This section shall not apply in the case of any proceedings by the Crown.

Costs in cases transferred from one court to the other.

20. Where an action, counterclaim or matter is ordered to be transferred from the Supreme Court to the Court of First Instance or from the Court of First Instance to the Supreme Court, the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the court which ordered the transfer, be in the discretion of the court to which the proceedings are transferred, and that court shall have power to make orders with respect thereto and as to the scales or columns on or under which the costs of the several parts of the proceedings are to be taxed, and the costs of the whole proceedings shall be taxed in that court: *(1934 c.53, s.73).*

Provided that, as regards so much of the proceedings in any action transferred from the Supreme Court to the Court of First Instance as take place in the Supreme Court before the transfer—

- (a) the costs thereof shall be subject to the provisions of section 19; and
- (b) the powers of the Chief Justice under section 19(3) to make an order allowing costs on the Supreme Court scale, or on or under any Court of First Instance scale or column, shall, subject to any order of the Supreme Court, be exercisable by the judge of the Court of First Instance.

Power of judge to refer to referee.

21. (1) Subject to rules of court, the judge may refer to a referee for inquiry and report, any proceedings where the question in dispute consists wholly or in part of matters of account. *(1934 c.53, s.90).*

(2) Where any proceedings or question are so referred, the judge may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report may give such judgment or make such order in the proceedings as may be just.

(3) The judge may, after deciding or reserving any question of liability, refer to the clerk of the court any mere matter of account which is in dispute

between the parties, and after deciding the question of liability, may give judgment on the report of the clerk of the court.

Avoidance of multiplicity of proceedings.

22. (1) *Repealed.*

(2) In the exercise of the jurisdiction granted by this Ordinance the court shall have power to grant either absolutely or on such terms as shall seem just, all such remedies or relief whatsoever interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly put forward by them respectively or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

(3) *Repealed.*

Practice and procedure.

23. The jurisdiction vested in the court shall be exercised so far as regards powers, practice and procedure in the manner provided by this Ordinance and by such rules and orders of court as may be made pursuant to this Ordinance and in default thereof in substantial conformity with the law and practice for the time being observed in England in the county courts.

Minors.

(1934 c.53, s.77). 24. Any person under the age of eighteen years may prosecute any action in the Court of First Instance for any sum of money not exceeding £1,000 which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age.

Payment of judgments and orders.

(1934 c.53, s.96). 25. (1) Where a judgment is given or an order is made by the court under which a sum of money of any amount is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, the court may, as it thinks fit, order the money to be paid either—

(a) in one sum, whether forthwith or within such period as the court may fix; or

(b) by such instalments payable at such times as the court may fix.

(2) If at any time it appears to the satisfaction of the judge that any party to any proceedings is unable from any cause to pay any sum recovered against him (whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise) or any instalment thereof, the judge may suspend or stay any judgment or order given or made in the proceedings, or stay any execution thereon for such time and on such terms as he thinks fit, and so from time to time until it appears that the cause of inability has ceased, or he may order the discharge of the party from arrest or prison on such terms as he thinks fit.

(3) All moneys payable under a judgment or order shall be paid into court:

Provided that where no order is made as to payment by instalments, the money shall, if the court so directs, be paid by one party to the other party or his solicitor, subject to the lien, if any, of that solicitor.

Execution of judgments or orders for money.

26. (1) Any sum of money payable under a judgment or order may, in case of default or failure of payment thereof, forthwith or at the time or times and in the manner thereby directed, be recovered by execution against the goods and chattels of the party against whom the judgment or order was obtained. *(1934 c.53, s.116(1) and (2)).*

(2) The clerk of the court, on the application of the party prosecuting any such judgment or order, shall issue a warrant of execution in the nature of a writ of fieri facias whereby the sheriff shall be empowered to levy or cause to be levied by distress and sale of the goods and chattels, wherever they may be found within Gibraltar, the money payable under the judgment or order and the costs of the execution.

Execution of orders for payment by instalments.

27. (1) Where the court has made an order for payment of any sum of money by instalments, execution on the order shall not be issued until after the default in payment of some instalment according to the order. *(1959 c.22, s.121).*

(2) Rules of court may prescribe the cases in which execution is to issue if there is any such default and limit the amounts for which and the times at which execution may issue.

(3) Except so far as may be otherwise provided by rules of court made for such purposes, execution or successive executions may issue if there is any default for the whole of the sum of money and costs then remaining unpaid or for such part thereof as the court may order either at the time of the original order or at any subsequent time:

Provided that, except so far as may be otherwise provided by such rules, no execution shall issue unless at the time when it issues the whole or some part of an instalment which has already become due remains unpaid.

Goods which may be seized.

(1934 c.53, s.121). 28. The sheriff or his deputy executing any warrant of execution against the goods or chattels of any person may by virtue thereof seize—

- (a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family, and the tools and implements of his trade to the value of £50, which shall to that extent be protected from seizure; and
- (b) any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

Disposal of bills of exchange, etc., seized.

(1934 c.53, s.123). 29. The sheriff shall hold any bills of exchange, promissory notes, bonds, specialties or other securities for money seized in execution under process of the court as security for the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised, for the benefit of the plaintiff, and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.

Custody of goods seized.

(1934 c.53, s.122). 30. Goods seized in execution shall until the sale thereof—

- (a) be deposited by the sheriff or his deputy in some fit place; or
- (b) remain in the custody of a fit person approved and put in possession by the sheriff or his deputy; or
- (c) be safeguarded in such other manner as the sheriff directs.

Period to elapse before sale.

(1934 c.53, s.125). 31. No goods seized in execution shall be sold for the purpose of satisfying the warrant of execution until the expiration of a period of at least five days next following the day on which the goods have been so seized unless—

- (a) the goods are of a perishable nature; or

(b) the person whose goods have been seized so requests in writing.

Method of selling goods.

32. No goods seized in execution shall be sold for the purpose of satisfying the warrant of execution except by public auction unless the judge shall otherwise order. *(1934 c.53, s.126).*

Execution to be superseded on payment.

33. (1) In or upon every warrant of execution issued against the goods or chattels of any person, the clerk of the court shall cause to be inserted or endorsed the sum of money and costs adjudged, and the fees for the execution of the warrant. *(1934 c.53, s.118).*

(2) If the person against whom the execution is issued, before the actual sale of the goods and chattels, pays or causes to be paid or tendered to the sheriff or his deputy the sum of money and costs inserted or endorsed, or such part thereof as the person entitled thereto agrees to accept in full satisfaction, together with the fees inserted or endorsed, the execution shall be superseded, and the goods and chattels of the first-mentioned person shall be discharged and set at liberty.

Times of application to be entered in records.

34. The precise time of the making of an application to the clerk of the court to issue a warrant of execution shall be entered by him in the book prescribed for the purpose and on the warrant, and when more than one such warrant is issued they shall be executed in the order of the times so entered. *(1934 c.53, s.116).*

Issue and execution of orders of committal.

35. (1) Whenever any order or warrant for the committal of any person to prison is made or issued (whether in pursuance of this Ordinance or of any other enactment or of rules of court), the order or warrant shall be directed to the sheriff, who shall thereby be empowered to take the body of the person against whom the order is made or warrant issued. *(1934 c.53, s.140).*

(2) The Superintendent of the Prison shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.

Claims for rent where goods seized in execution.

36. (1) Section 1 of the Landlord and Tenant Act, 1709, shall not apply to goods seized in execution under process under this Ordinance but the following provisions of this section shall apply in substitution therefor. *(1934 c.53, s.134).*

(2) The landlord of any tenement in which any goods are so seized may claim the rent of the tenement in arrears at the date of the seizure, at any time within the five days next following that date, or before the removal of the goods, by delivering to the sheriff or his deputy a claim in writing, signed by himself or his agent, stating—

- (a) the amount of rent claimed to be in arrear; and
- (b) the period in respect of which the rent is due.

(3) Where such a claim is made, the sheriff or his deputy shall in addition thereto distrain for the rent so claimed and the cost of the distress, and shall not, within five days next after the distress, sell any part of the goods seized, unless—

- (a) the goods are of a perishable nature; or
- (b) the person whose goods have been seized so requests in writing.

(4) The sheriff shall afterwards sell under the execution and distress such of the goods as will satisfy—

- (a) first, the costs of and incidental to the sale;
- (b) next, the claim of the landlord not exceeding—
 - (i) in a case where the tenement is let by the week, four weeks rent;
 - (ii) in a case where the tenement is let for any other term less than a year, the rent of two terms of payment;
 - (iii) in any other case, one year's rent; and

(c) lastly, the amount for which the warrant of execution issued.

(5) If any replevin is made of the goods seized, the sheriff shall nevertheless sell such portion thereof as will satisfy the costs of and incidental to the sale under the execution and the amount for which the warrant of execution issued.

(6) In any event the surplus of the sale, if any, and the residue of the goods shall be returned to the execution debtor.

(7) The fees of the sheriff for keeping possession, appraisal and sale under any such distress shall be the same as would have been payable if the

distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

(8) Nothing in this section shall affect the provisions of section 35 of the Bankruptcy Ordinance¹.

Irregularity in executing warrants.

37. No officer of the court in executing any warrant, and no person at whose instance any such warrant is executed, shall be deemed a trespasser by reason of any irregularity or informality— *(1934 c.53, s.146).*

- (a) in any proceeding on the validity of which the warrant depends;
or
- (b) in the form of the warrant or in the mode of executing it but any person aggrieved may bring an action for any special damage sustained by him by reason of the irregularity or informality against the person guilty thereof:

Provided that no costs shall be recovered in such an action unless the damages awarded exceed £5.

Replevins to be granted by clerk of the court on security being given.

38. (1) The clerk of the court shall have power, subject to the provisions of this Ordinance, to approve of replevin bonds and to grant replevins and to issue all necessary process in relation thereto, and any such process shall be executed by the sheriff or his deputy. *(1934 c.53, s.101).*

(2) The clerk of the court shall, at the instance of the party whose goods have been seized, cause the goods to be replevied to that party on his giving such security as is provided in this Ordinance.

Amount and conditions of security.

39. (1) It shall be a condition of any security given under section 38 that the replevisor will commence an action of replevin against the seizer in the court within one month from the date when the security is given. *(1934 c.53, s.102).*

(2) The replevisor shall give security, to be approved by the clerk of the court, for such an amount as the clerk of the court thinks sufficient to cover both the probable costs of the action and either—

¹ 1934-13

- (a) the alleged rent or damage in respect of which the distress has been made; or
 - (b) in a case where the goods replevied have been seized otherwise than under colour of distress, the value of the goods.
- (3) It shall be a further condition of the security that the replevisor will—
- (a) prosecute the action with effect and without delay; and
 - (b) make a return of the goods if the return thereof is ordered in the action.

Interpleader by sheriff.

(1934 c.53, s.133). 40. (1) If a claim is made to or in respect of any goods or chattels seized in execution under process under this Ordinance, or in respect of the proceeds or value thereof, the sheriff may, as well before as after any action brought against him, issue a summons calling before the court the party at whose instance the process issued and the party making the claim.

(2) Upon the issue of the summons, any action brought in the court in respect of the claim or of any damage arising out of the execution of the warrant shall be stayed.

(3) On the hearing of the summons, the judge shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising or capable of arising out of the execution of the warrant by the sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as he thinks fit.

Employers and workers.

(1875 c.90, s.3). 41. In any proceeding in relation to any dispute between an employer and a worker arising out of or incidental to their relation as such the court may, in addition to any jurisdiction which it might have exercised if this section had not been enacted, exercise all or any of the following powers, that is to say,—

- (a) it may adjust and set off the one against the other all such claims on the part either of the employer or of the worker, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and
- (b) if, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the worker upon such terms as to the apportionment of

wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks fit; and

- (c) where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded or some part of such damages. The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking. Any sum paid by a surety on behalf of a defendant in respect of such a security together with all costs incurred by such surety in respect of security, shall be deemed to be a debt due to him from the defendant, and the court may order payment thereof to the surety by the defendant.

Mode of giving security.

42. A person may give security under section 41 by an oral or written acknowledgment, in or under the direction of the court, of the undertaking or condition by and the sum for which he is bound, in such manner and form as may be prescribed, and in any case where security is so given, the court may order payment of any sum which may become due in pursuance of such security. *(1875 c.90, s.8).*

Executors and administrators.

43. Any executor or administrator may sue and be sued 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. *(1934 c.53 s.76).*

Persons jointly liable.

44. (1) Where a plaintiff has a demand recoverable against two or more persons jointly liable, it shall be sufficient to serve any of those persons with process, and judgment may be obtained and execution issued against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the court. *(1934 c.53, s.78).*

(2) Where judgment is so obtained against any person and is satisfied by that person, he shall be entitled to recover in the court contribution from any other person jointly liable with him.

Appeals in civil cases.

45. Subject to the provisions of this Ordinance, an appeal shall lie to the Supreme Court from the court in the following cases:—

- (a) from all final judgments and decisions; and
- (b) by leave of the judge or the Chief Justice from all interlocutory orders and decisions made in the course of any suit or matter before the court.

Discretionary power of Supreme Court.

46. Notwithstanding anything contained in any rules of court, the Supreme Court may entertain any appeal from the court on any terms which it thinks just.

Powers of Supreme Court on appeal.

(1934 c.53, s.109). 47. On the hearing of an appeal, the Supreme Court may draw any inference of fact and either—

- (a) order a new trial on such terms as the Supreme Court thinks just; or
- (b) order judgment to be entered for any party; or
- (c) make a final or other order on such terms as the Supreme Court thinks proper to ensure the determination on the merits of the real question in controversy between the parties.

Fees and costs.

48. The fees and costs set forth in rules of court made under this Ordinance may be demanded and received by the clerk or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned.

49. *Repealed.*

Assessors.

50. (1) In any proceedings the judge may, if he thinks fit on the application of any party, summon to his assistance, in such manner as may be prescribed, one or more persons of skill and experience in the matter to which the proceedings relate who may be willing to sit with the judge and act as assessors.

(2) The remuneration of assessors for so sitting shall be at such rate as may be prescribed, and shall be costs in the proceedings unless otherwise ordered by the judge.

(3) Where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by any party in the prescribed manner.

Disobedience of summons, etc.

51. (1) A person summoned in pursuance of rules of court as a witness in the court who— *(1934 c.53, s.81).*

(a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or

(b) refuses to be sworn or give evidence,
is liable to a fine of £50.

(2) A person present in court who is required to give evidence but refuses to be sworn or give evidence is liable to a fine of £50.

(3) The judge may at his discretion direct that the whole or any part of any such fine, after deducting the costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

Penalty for non-attendance on judgment summons.

52. (1) If a debtor summoned to attend the court by a judgment summons fails to attend on the day and at the time fixed for any hearing thereof, the judge may adjourn or further adjourn the summons to a specified time on a specified day and order the debtor to attend at that time on that day. *(1959 c.22, s.144).*

(2) If—

(a) a debtor, having been ordered under subsection (1) to attend at a specified time on a specified day, fails to do so; or

(b) a debtor who attends for the hearing of a judgment summons refuses to be sworn or to give evidence,
the judge may make an order committing him to prison for a period not exceeding fourteen days in respect of the failure or refusal.

(3) The judge may at any time revoke an order committing a person to prison under this section and, if he is already in custody, order his discharge.

Contempt.

(1934 c.53, s.139). 53. If any person—

- (a) wilfully insults the judge or any witness, or any officer of the court during his sitting or attendance in court, or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court,

any officer of the court, with or without the assistance of any other person, may, by order of the judge, take the offender into custody and detain him until the rising of the court, and the judge may, if he thinks fit—

- (i) by a warrant under his hand commit the offender for any period not exceeding seven days to prison; or
- (ii) impose upon the offender a fine not exceeding £20 for every offence.

Protection of judicial officers.

54. No officer of the Court of First Instance or other person bound to execute the lawful warrants or orders of the court shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the court.

Rules of court.

55. The Chief Justice may make rules of court for all or any of the following purposes—

- (a) for regulating the practice and procedure of the court in matters not specifically provided for in this or any other Ordinance;
- (b) for regulating the forms to be used and all matters connected therewith;
- (c) for regulating the receipt of moneys paid into court, or received or recovered under or by virtue of any process of execution or distress;
- (d) for regulating the payment out of court of all moneys to the persons entitled thereto;

- (e) for prescribing the books and forms of account to be kept or used in the court;
- (f) *Repealed*
- (g) for prescribing the acceptance, retention and disposal of fees and costs;
- (h) for fixing tables of fees and costs recoverable by legal practitioners for their services on taxation and providing for the taxation of the same;
- (i) for the better carrying into effect of the provisions and objects and intentions of this Ordinance.

Fees to be taken in the court.

55A. The Chief Justice, has and is deemed always to have had, the power by rules to prescribe, vary or abolish the fees to be taken in the court.

Saving.

56. (1) In the absence of any specific provision to the contrary nothing in this Ordinance shall be deemed to limit or otherwise affect any jurisdiction or power conferred or any form of procedure prescribed by or under any law for the time being in force.

(2) Save in so far as is otherwise expressly provided, nothing in this Ordinance contained shall operate to give the Court of First Instance jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits of its ordinary jurisdiction.