

Seychelles

Courts Act

Magistrates' Court (Civil Procedure) Rules Statutory Instrument 114 of 1968

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Seychelles

Courts Act

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Commenced on 1 December 1968

[This is the version of this document at 1 December 2014.]

[S.I. 114 of 1968; S.I. 95 of 1975; S.I. 72 of 1976; S.I. 6 of 2011]

1. Short title

These rules may be cited as the Magistrates' Court (Civil Procedure) Rules.

2. Interpretation

In these rules the context otherwise requires—

“**advocate**” means a barrister or an attorney admitted to practice in the Supreme Court;

“**cause**” shall include any action, suit or other original proceedings between a plaintiff and a defendant;

“**clerk**” has the same meaning as in Part III of the Courts Act;

“**Code**” means the Seychelles Code of Civil Procedure;

“**court**” means the Magistrates' Court;

“**Government**” means the Government of Seychelles;

“**law officer**” means the Attorney General or any other person appointed by the Attorney General under section 13 of the Legal Practitioners Act;

“**matter**” shall include every proceeding in the court not in a cause;

“**process server**” means a process server of the Supreme Court and includes any person by whom process may be served under the provisions of section 35 of the Act;

“**suit**” or “**action**” means a civil proceeding commenced by a plaintiff.

Commencement of action

3. Suits to be commenced by plaintiff

Every suit shall be instituted by filling a plaintiff with the clerk.

4. Plaints to be signed or marked

Every such plaintiff shall be signed by the plaintiff or by his advocate. In case the plaintiff is unable to sign, he shall mark the plaintiff in the presence of the clerk who shall certify under his signature that the mark has been affixed in his presence.

5. Copies of plaintiff

The plaintiff shall in addition file as many copies of the plaintiff, as there are defendants.

6. Prepayment of fees

Subject as otherwise provided, no proceeding shall be had and no process shall be issued by the clerk except on prepayment of the fees prescribed in respect of such proceeding or process.

7. Proceedings by the Republic or the Government

- (1) Any claim of the Republic or the Government falling within the jurisdiction of the court, whether or not the claim is, or might be, enforceable under rules made in pursuance of paragraph (f) of section 44(2) of the Act, may be enforced by suit under these rules.
- (2) Such claims shall be brought in the name of the Attorney General and, subject as hereinafter provided, shall be carried on in the same manner in every respect as suits between private parties.
Provided that no personal liability shall attach to the Attorney General in respect of costs awarded in any suit against the Republic or the Government.
- (3) Every plaint under this rules shall be signed by the Attorney General.
- (4) Every suit under this rule shall be conducted on behalf of the Republic or the Government by a law officer or by an advocate or by a government officer generally or specially authorised in writing by the Attorney General.
- (5) No proceeding founded on rules made in pursuance of paragraph (f) of section 44(2) of the Act shall be commenced or continued in respect of any claim or item of claim or item of a claim included in a plaint presented under this rule.

8. Particulars of plaint to be registered

On receipt of a plaint the clerk shall enter in a register the names and places of residence of the parties, the nature of the action and the relief sought. Such entries shall be numbered in every year according to the order in which the plaints are received and the suit shall bear the same number. The judgment or final order of the court shall likewise be entered against such suit.

Issue and service of summons

9. Summons

When the plaint has been entered in the register, the clerk shall issue a summons, under the seal of the court and signed by him, to each defendant calling upon him to appear in the court at a date and time therein stated, to answer the claim. A copy of the plaint shall be served with each summons.

10. Commencement of suit

The summons to appear to a plaint shall be dated on the day on which the suit was entered and such date shall be the date of commencement of the suit.

11. Day for appearance of defendant

The day for the appearance of the defendant shall be fixed by the clerk so as to allow the defendant sufficient time to enable him to appear and answer on such day. The time fixed for appearance shall not be earlier than 48 hours after the service of the summons, except by leave of the court.

12. Sections 34, 35, 37 to 43 of the Code to apply

The provisions of sections 34, 35, 37 to 43 of the Code shall apply to the service of summonses to appear to a plaint in the court. All summonses to witnesses, orders of the court and other process requiring service

may be served in the same manner as summonses to appear to a plaintiff except where a special mode of service is directed by these rules or by any other law in force.

13. Process server to make return of service to clerk

All summonses, notices, orders or order process of the court required by these rules or any law in force or hereafter enacted to be served by a process server, shall within twenty-four hours after such service be returned to the clerk and the process server by whom such service has been effected shall certify thereon over his signature the day and hour of service and the place and manner of service.

14. No service on *dies non*

No summons, notices or other process shall be served on a public holiday, or between the hours of six in the evening and six in the morning, except in case of urgency, with the leave of the court. A public holiday shall be counted in any computation of time required by these rules, unless any such day shall be the last of such time, in which case it shall be excluded from such computation.

15. Service on parties on certain islands

(1) Service of any document whether personal or otherwise, where the party to be served is on any of the inner islands or of the outlying islands shall be effected by leaving two copies thereof with the Attorney General, unless such person has in Mahe an attorney or agent who may be served on his behalf. The two copies so left with the Attorney General shall be forwarded by him for service by a person designated by him. Such service shall be effected in the manner provided by section 34 of the Code and shall be as valid as service by an usher. The person designated by the Attorney General shall be bound to effect service on prepayment of a fee of Rs.5 by the party at whose instance the service is to be effected.

(2) In this rule—

“inner island” means the islands of Silhouette, North, Frigate, L'Ilot and Recif;

“outlying islands” means those outlying islands listed in the First Schedule to the Peace Officers (inner Islands and Outlying Islands) Act;

Appearance of parties

16. Parties to appear on date fixed in summons

On the day fixed in the summons for the defendant to appear and answer to the claim, the parties shall be in attendance at the court in person or by their respective advocates or agents.

17. Procedure if neither party appears

If on the day fixed for the defendant to appear and answer the claim, or on any other subsequent day to which the hearing of the suit is adjourned, when the case is called on, neither party appears, the suit shall then be dismissed unless the court for reasons to be recorded, otherwise directs. When a suit is dismissed under this rule, the plaintiff may bring a fresh suit, subject to the law as to prescription.

18. If defendant does not appear

If on the day so fixed in the summons when the case is called on the plaintiff appears but the defendant does not appear or sufficiently excuse his absence, the court after due proof of the service of the summons, may proceed to the hearing of the suit and may give judgment in the absence of the defendant, or may adjourn the hearing of the suit *ex-parte*.

19. If defendant subsequently appears

If the court has adjourned the hearing of the suit *ex-parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

20. If plaintiff does not appear

If on the day so fixed in the summons, when the case is not called on, the defendant appears and the plaintiff does not appear or sufficiently excuse his absence, the plaintiff's suit shall be dismissed. If the defendant admits the plaintiff's claim or part thereof, the court shall give judgment for the plaintiff for so much of the claim as is admitted. If the defendant had claimed a set-off (compensation), the court may proceed to the hearing of the set-off and may give judgment thereon.

21. If only some of the defendants appear

If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit may proceed, and the court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

22. Setting aside judgment given *ex parte*

If in any case where one party does not appear on the day fixed in the summons, judgment has been given by the court, the party against whom judgment has been given may apply to the court to set it aside by motion made within one month after the date of the judgment if the case has been dismissed, or within one month after execution has been effected if judgment has been given against the defendant, and if he satisfies the court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall set aside the judgment upon such terms as to costs, payment into court or otherwise as it thinks fit and shall order the suit to be restored to the list of cases for hearing. Notice of such motion shall be given to the other side.

23. How parties appear

A party to a cause or matter may appear in person or by advocate. A party not resident in Seychelles may appoint some other person to appear on his behalf;

Provided that the court may for sufficient reasons allow any other person to appear on behalf of any party.

Pleadings and inspection

24. Particulars to be contained in plaint

- (1) The plaint must contain the following particulars:
 - (a) the name of the court in which the suit is brought;
 - (b) the name, description and place of residence of the plaintiff;
 - (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
 - (d) a plain and concise statement of the material facts alleged by the plaintiff which are necessary to sustain the action without any statement of the evidence by which such facts may be proved;
 - (e) a demand of the relief which the plaintiff claims;

- (f) if the plaintiff has allowed a set-off or has relinquished a portion of his claim, the amount so allowed or relinquished.
- (2) Where any matter of law is pleaded, such matter shall be mentioned in the briefest possible terms, with a reference to the short title and the number of the section or rule containing the relevant statutory provision.
- (3) Estimate of value, relinquishment or any other matter necessary to show that the claim is within the jurisdiction of the court shall be distinctly pleaded.
- (4) If the plaintiff sues upon a document other than a document transcribed in the Registry of Deeds or registered in the land register he shall annex a copy thereof to his plaint. If he relies on any other documents as evidence in support of his claim, he shall annex a list thereof to his plaint and shall state where the same may be seen a reasonable time before the hearing.
- (5) If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.
- (6) If the plaintiff sues, or the defendant or any of the defendant is sued, in a representative character, the plaint must state in which capacity the plaintiff or defendant sues or is sued.

25. Statement of defence

The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alleged in the plaint must be distinctly denied or they will be taken to be admitted.

26. Statement of defence must be filed with the clerk

The statement of defence shall be filed with the clerk and shall form part of the records. The defendant shall supply one copy to the plaintiff or there be more than one plaintiff, to each plaintiff, unless the court directs otherwise.

27. List of defendant's documents

If the defendant intends to produce any documentary evidence, he shall annex a list thereof to his statement of defence and shall state where the same may be seen a reasonable time before the hearing.

28. Set-off

If the defendant relies upon a set-off (compensation), his statement of defence must contain particulars of such set-off and a statement of the material facts necessary to sustain the same. If the set-off depends upon a document, he must annex a copy of such document to his statement of defence.

29. Counterclaim

The provisions of section 80 of the Code shall apply to a Counterclaim.

[Note: [SI 6 of 2011](#) purported to insert rule 29 as above. That SI did not however repeal the existing rule 29, which provided as follows: "If the defendant desires to make a counterclaim (demande reconventionnelle) to the plaintiff's claim, he must enter a separate suit in respect of such counterclaim. If judgement be given for the plaintiff in respect of his claim the court may grant a stay of execution of such judgment pending the hearing of the counterclaim." An unofficial reprint of this Cap released by the Department of Legal Affairs in March 2012 proceeds on the assumption that [SI 6 of 2011](#) was effective to repeal and replace rule 29.]

30. Failure to comply with rules 24(4) and 27

If either the plaintiff or the defendant omits to comply with paragraph (4) of rule 24 or with rule 27 he shall not be allowed to produce in evidence on his behalf at the hearing, any document in respect of which

such omission has been made, without the leave of the court and subject to such terms as the court may direct.

31. Exception to rule 30

The provisions of rule 24(4) and of rule 27 shall not apply to documents produced for cross-examination of the witnesses of the other party, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

32. Document not in possession of party

If any document included in the list of documents attached to the plaint or the statement of defence is not in the possession or power of the plaintiff or the defendant, as the case may be, the plaintiff or the defendant, shall state, if possible in whose possession it is.

33. Inspection of documents

Each party shall be entitled to demand of the other inspection of any deed, agreement, bill or other documents mentioned or referred to in his pleading or in the list of documents annexed thereto or which are or have been in his possession or power, relating to the matter in question, and, in the event of such inspection not being granted, the party desiring the same may apply to the court by motion, of which notice shall be given at least two clear days before the hearing, for an order for such inspection, and the court may make an order for inspection in such place and in such manner as it may think fit:

Provided that the court shall not make an order if it is of opinion that it is not necessary for disposing fairly of the cause or matter or to save costs.

34. Non-compliance with order for inspection

If any party fails to comply with an order for inspection of documents, he shall be liable, if a plaintiff, to have his suit dismissed and, if a defendant, to be placed in the same position as if he had not appeared on the day fixed in the summons to answer the claim.

35. Particulars

- (1) A defendant may apply on the day fixed in the summons to appear and answer to the claim or prior thereto, for particulars of the plaintiff's claim, and the court shall direct the furnishing of such particulars as appear to be necessary and may make such order as to costs and the time within which particulars shall be furnished, as may seem just.
- (2) The plaintiff may apply for particulars of the defence or set off and the court shall direct the furnishing of such particulars as appear to be necessary and make such order as to costs and the time within which particulars shall be furnished as may seem just.
- (3) The court may at any time, of its own motion or on the application of either party order particulars or further particulars to be supplied and may adjourn the hearing for that purpose and may make such order as to costs and the time within which such particulars shall be supplied as appears to be just.

36. Plans

The court may order plans of any *locus in quo* to be supplied by either party in the same manner as particulars.

37. Copies of particulars to be supplied

When particulars are ordered to be furnished, one copy shall be filed with the clerk and shall form part of the record, and one copy shall be supplied to each plaintiff or each defendant, as the case may be, by the party ordered to supply such particulars, unless the court directs otherwise.

38. Point of law

Any point of law raised by the pleadings shall be disposed of at the trial, provided that by consent of the parties, or by order of the court, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. If in the opinion of the court the decision of such point of law substantially disposes of the whole cause of action, ground of defence or set-off, the court may thereupon dismiss the action, or make such other order therein as may be just.

39. Striking out pleadings

The court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious the court may order the action to be stayed or dismissed or may give judgment, on such terms as may be just.

40. Election of domicile

Every party who is represented by an advocate shall elect domicile in the office of his advocate. If he is not represented, he shall be deemed to have elected domicile at the place of residence endorsed by him on the pleadings or other application as the case may be unless he files with the clerk a written declaration electing domicile elsewhere within Seychelles.

Possessory actions**41. Title or ownership not to be raised in defence when possession or trespass are denied**

In possessory actions, if the possession and trespass are denied by the defendant, he shall not be competent for him to raise the question of title or ownership.

42. Unsuccessful plaintiff in a Supreme Court petitory action debarred from entering possessory action in the court

It shall not be lawful for an unsuccessful plaintiff in a petitory action (action petitoire) in the Supreme Court to enter a possessory action in the court.

Payment into court**43. Payment into court in full satisfaction of demand**

The defendant in any suit may pay into court, at any stage of the suit, such sum of money as he shall consider a full satisfaction for the demand of the plaintiff. Notice of such payment shall be given forthwith by the clerk to the plaintiff in writing, and the amount shall be paid out to the plaintiff on his application.

44. Acceptance in part satisfaction

If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the court decides that the amount paid into court was a full satisfaction of the plaintiff's claim, the plaintiff shall pay to the defendant the costs of the suit incurred by him after such

payment and the costs incurred by him previous thereto, so far as they were caused by excess in the plaintiff's claim.

45. Acceptance in full satisfaction

If the plaintiff accepts such amount as satisfaction in full of his claim, he shall file in court a statement to that effect and the court shall pass judgment accordingly, and shall make such order as to the costs of the suit as shall appear to the court to be just under the circumstances.

Joinder of causes of action, consolidation, parties and intervention

46. Sections 105 to 120 of the Code to apply

The provisions of section 105 to 120 of the Code shall apply in any cause or matter in the court.

Incidental demands

47. Application to be made by motion

Either party to a suit may, in the course of such suit, apply to the court by way of motion to make an incidental demand.

48. Manner of presenting motion

The motion may be made verbally, but the court may order the motion to be made in writing and to be supported by affidavit.

Hearing

49. If defendant admits claim

If on the day fixed in the summons for the defendant to appear the defendant appears and admits the plaintiff's claim, judgment shall be given for the plaintiff.

50. If claim denied, statement of defence to be filed

If the defendant denies the plaintiff's claim or any part, thereof, the court shall adjourn the case to a date to be fixed by the court and shall order the defendant to file a statement of defence on or before such date. If there are more than one defendant, with different defences, separate statements of defence shall be filed by such defendants. The court may, if it thinks fit, give judgment for the plaintiff for such part of the claim as is admitted by the defendant to be due:

Provided however, that, if the defendant appears in person, the court if it thinks fit, may allow him to make his statement of defence verbally, which statement shall be recorded by the clerk or by the Magistrate, and the court may either hear the suit forthwith or fix another date for hearing:

Provided further that the court may, at any time after the parties have appeared, proceed to hear the suit, if the parties are ready and consent thereto.

51. Failure to file statement of defence

On the day to which the suit has been adjourned under the last preceding rule, the parties shall appear and the court shall then adjourn the suit to a date to be fixed by the court for the hearing. If the defendant has neglected to file his statement of defence within the time ordered by the court, the court may either give

judgment for them plaintiff on his claim or grant further time, subject to such order as to costs, as to the court may seem fit.

52. Hearing and adjournment

On the date fixed by the court for the hearing of the suit, the parties shall appear and the court shall proceed to the hearing of the suit. The court may, at any stage of the suit, if sufficient cause be shown and subject to such order as to costs as to the court may seem fit, sufficient cause be shown and subject to such order as to costs as to the court may seem fit, grant time to the plaintiff or defendant to proceed in the prosecution or defence of the suit and may adjourn the hearing of the suit.

53. Procedure when suit is settled

If on the day fixed in the summons for the defendant to appear, or the plaintiff if no set off has been pleaded, appear in court and state that the suit has been settled, the suit shall be struck out and no suit shall thereafter be brought between the same parties in respect of the same cause of action.

54. Judgment by consent

The parties may at any stage of the suit before judgment, appear in court, and file a judgment by consent signed by both parties, stating the terms and conditions agreed upon between them in settlement of the suit and the amount, if any, to be paid by either party to the other, and the court, unless it sees cause not to do so, shall give judgment in accordance with such settlement.

55. Absence of Magistrate

When by reason of the illness or unavoidable absence of the Magistrate, the court cannot be held, the clerk shall call all the parties to the cases fixed for the day and all witnesses summoned for such day, and shall adjourn the court to such other day as he may deem expedient.

56. Non-appearance at adjourned hearing

If on the day to which the hearing of the suit has been adjourned by the court, or by the clerk under the provisions of the last preceding rule, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the manners directed in that behalf by rules 16, 17 and 19 or may make such order as it thinks fit.

57. Procedure if parties fail to produce evidence, etc

If any party to a suit to whom time has been granted, fails to produce his evidence or to cause the attendance of his witnesses or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith.

58. Hearing of suit *in situ*

The court may in any suit, either of its own motion or at the request of any party to the suit, if the court be of opinion that the hearing of the suit will be facilitated thereby—

- (a) direct that such suit or any witnesses in the suit be heard on the land or premises in dispute between the parties to the suit or at any place where any matter in dispute in such suit has occurred; or
- (b) the court may proceed to such land or premises or place for the purpose of in section only, without hearing witnesses, but the parties shall have the right to be present at such inspection.

The court shall notify the parties of the place and the date and time of such hearing or inspection, in sufficient time to enable them to be present.

59. Court to be open

All sittings of the court shall be open to the public but the court may, in any particular cause or matter, if the court thinks necessary in the interests of public order or decency, order all persons not directly interested in such cause or matter, or any particular class of persons, to leave the court during the hearing.

60. Procedure at trial

- (1) When the suit is called on for hearing, except in cases to which paragraph (4) applies, the plaintiff shall begin and his advocate if present may, if he so desires, open his case. The evidence for the plaintiff shall then be adduced.
- (2) At the close of the evidence for the plaintiff, if the plaintiff failed to make out a case which, in the opinion of the court, the defendant is required to answer, judgment shall be entered for the defendant.
- (3) If the court calls upon the defendant, his advocate, if present may open his case and the evidence for the defendant shall then be adduced, after which his advocate may address the court. The advocate for the plaintiff may address the court in reply.
- (4) Where the court decides on the pleadings that the initial onus is on the defendant, the defendant shall begin and the preceding paragraphs shall apply *mutatis mutandis*.
- (5) When any party to a cause or matter applies to examine the adverse party on his personal answers such examination shall take place as set out in rule 81.

61. Judgment

- (1) When the evidence and the address, if any, have been completed, the court shall either immediately or at some subsequent time record a brief note of the findings of the court on the main points in controversy and of the principal reasons of such findings and shall deliver an oral judgment in open court either immediately after the termination of the hearing or at some subsequent time of which notice shall be given to the parties and their advocates, if any.
- (2) No judgment delivered by the court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

62. Attendance of parties

- (1) The parties whether witnessed or not may remain in the court room if they so desire, throughout the hearing.
- (2) A party who is represented by an advocate need not attend any stage of the hearing, except when he is required as a witness.

63. Parties as witnesses

- (1) Where the plaintiffs are witnesses they shall testify before other witnesses are called on their behalf but as between themselves they may testify in any order.
- (2) Where the defendants are witnesses they shall testify before other witnesses are called on their behalf but as between themselves they may testify in any order.

64. Entries to be made on record

The Magistrate shall enter in the record of every cause or matter, the date or dates on which it is called on, the names of parties appearing and of the advocates, if any, by whom they are represented, and the

name, description and place of residence of every person who has given evidence. The Magistrate shall also make an entry of all the authorities cited by either party, of all the orders and judgments of the court, of all admissions made, of all objections taken and the ruling of the court thereon and of any other matter which appears to him to be requisite.

65. Record and interpretation of evidence and personal answers

- (1) The evidence of the witnesses and the answers of a party examined on personal answers shall be recorded in the following manner:—
 - (a) such evidence or answers shall be taken down in writing in English by the Magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate and shall form part of the record;
 - (b) such evidence or answers shall ordinarily be taken down in the form of a narrative, but the Magistrate may, in his discretion, take down or cause to be taken down questions and answers where that form is more convenient or specially significant;
 - (c) whenever such evidence or answers are given in French or Creole, the Magistrate may, if he is satisfied that he is sufficiently conversant with these languages, take down or cause to be taken down such evidence or answers in English in accordance with the provisions of the preceding sub-paragraphs without the use of a sworn interpreter.
- (2) The Magistrate may record or cause to be recorded such remarks (if any) as he thinks material respecting the demeanour of a witness or party under examination.
- (3)
 - (a) Whenever any evidence or personal answers are given in a language not understood by a party, and he is present in person and is not represented by an advocate, the evidence or answers shall be interpreted to him in a language understood by him.
 - (b) If he is represented by an advocate and the evidence or answers are given in a language other than English, and not understood by the advocate, it shall be interpreted to such advocate in English.
 - (c) When documents are put in for the purpose of formal proof it shall be in the discretion of the Magistrate to interpret or cause to be interpreted as much thereof as appears necessary.
 - (d) When the Magistrate is satisfied that he is sufficiently conversant with English, French or Creole, the Magistrate may, without the use of a sworn interpreter, undertake any interpretation required under this paragraph or which may be necessary in any cause or matter, from one into any other of the aforementioned languages with which the Magistrate is conversant.

66. Documents admitted to be marked

Any document admitted in evidence shall be marked by the Magistrate or the clerk with a distinguishing number or letter and with the title of the cause or matter to which it relates and shall be attached to the record.

67. Documents rejected to be marked for identification at parties' request

Any document tendered in evidence but not admitted by rejected to be the court shall be similarly marked by the Magistrate or the clerk for the purpose of identification and as having been rejected and shall be attached to the record, if the party tendering the same requires.

Amendments

68. Sections 146 to 150 of the Code to apply

The provisions of section 146 to 150 of the Code shall apply in a suit in the court.

Witnesses

69. Witness summonses

Any party to a cause or matter may obtain a witness summons as provided under section 36(1) of the Act.

70. Particulars to be contained in witness summons

Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes, and any particular document which the person summoned is called upon to produce shall be described in the summons with reasonable accuracy.

71. Summons to produce document

Any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

72. Evidence of person present in court

Any person present in court may be required by the court to give evidence or to produce any document then and there in his actual possession or power.

73. Witness summons to be served by a process server

Every summons to a witness to give evidence or produce a document shall be served by a process server as nearly as may be in the manner prescribed by section 34 of the Code for the service of the summons on a defendant.

74. Time for service

The summons shall in all cases be served a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for traveling to the court. A summons shall not be issued less than 24 hours before the time when the attendance of the witness is required, without the special leave of the court.

75. When witness may depart

No person so summoned and attending shall depart unless and until—

- (a) he has been examined or has produced the document and the court has risen; or
- (b) he has obtained the leave of the court to depart.

76. Witness to be kept out of earshot of the court

Witnesses who have been summoned and who have not yet testified shall be kept out of ear-shot of the court witnesses who have testified shall remain in the court-room until they have obtained a leave of the court to depart.

77. Witness about to leave the jurisdiction

If a witness be about to leave the jurisdiction of the court, or if other sufficient cause be shown to the satisfaction of the court why his evidence should be taken immediately, the court may upon the application of either party, take the evidence of such witness at any time after the commencement of the cause or matter. Sufficient notice of the application shall be given to the adverse party.

Personal answers**78. Rules relating to examination of parties on personal answers**

- (1) Any party to a cause or matter may examine the adverse to examination party on his personal answers as to anything relevant to the matter at issue between the parties.
- (2) If a party to any cause or matter be the Republic or the Government or a body establishment (*établissement public*), a corporation or body having legal entity, such party shall be bound to appoint a special attorney to give his personal answers in such cause or matter. If on the day fixed for the appearance of any such party to give his personal answers, no such attorney appears on behalf of such party, and no satisfactory reason for such attorney's non-appearance is given, the facts, matters and things alleged by the adverse party may be held to have been admitted:

Provided however that administrators, managers or agents of such party may also be called upon to give their personal answers to matters which are within their personal knowledge and the court may in its discretion attach whatever weight it thinks fit to such answers.

- (3) If a party to a cause or matter be incapable in law of contracting (incapable), he shall give his personal answers through his guardian, curator or other legal representative.

79. Procedure to obtain attendance of adverse party for examination

Whenever a party is desirous of obtaining the personal answers not upon oath of the adverse party, he may apply to the court on the day fixed for the defendant to file his statement of defence, or prior thereto, or he may apply to the court *ex-parte* at any time prior to the date fixed for hearing of the cause or matter, to obtain the attendance of such adverse party and the court on sufficient ground being shown shall make an order granting the application. And the party having obtained such order shall serve a summons, together with a copy of the order, on the adverse party to appear in court on the day stated therein.

80. Party present in the court may be examined

If a party to the cause or matter is present in court at the hearing of the case, he may be examined on his personal answers with the permission of the Magistrate, without any previous application.

81. Examination when to take place

The examination on personal answers shall be in open court at the hearing of the cause or matter, but no party having closed his case shall be allowed thereafter to examine the adverse party on his personal answers.

82. Examination may be separate

If more than one person be called by either party to a cause or matter to give personal answers, the court may direct that each such person shall give his answers out of the hearing of the others.

Opposition by third parties**83. Sections 172 to 175 inclusive of the Code to apply**

The provisions of sections 172 to 175 of the Code shall apply to judgments rendered in a suit by the court.

Abatement**84. No abatement if cause of action survives**

A cause or matter shall not become abated by person of the death, bankruptcy or insolvency, or change of status or of capacity, of any of the parties, if the cause of action survives; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the hearing and the judgment.

85. Death, bankruptcy etc., of a party

In case of the death, bankruptcy or insolvency or change of status or of capacity, of a party to a cause or matter, the court may order that any necessary party be added or that any person be entitled to represent the party who has died or become bankrupt or insolvent, or being the successor in interest of any such party, be substituted for such party.

86. Substitution of name on record: application by representative of deceased party

Any person claiming to be the representative of deceased plaintiff or of a deceased defendant may apply to the court to substitute his name on the record for that of the deceased plaintiff, or the deceased defendant, as the case may be.

87. Application by plaintiff or defendant

Any plaintiff or defendant may apply to the court to substitute any person alleged to be representative of a deceased defendant or of a deceased plaintiff for the deceased defendant or the deceased plaintiff, as the case may be.

88. Procedure where party is added or substituted

If the court orders any party to be added or any person to be substituted under rule 85, 86 or 87, the cause or matter shall proceed in the same manner as if such person or parties had been parties at the commencement of the cause or matter.

89. Summons to compel a party to proceed

When the plaintiff or defendant in a cause or matter dies and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant or the person against whom the cause or matter may be continued may apply by summons to compel the plaintiff or the person entitled to proceed, to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant or, as the case may be, for the person against whom the cause or matter might have been continued.

Discontinuance

90. Discontinuance of action by plaintiff or defendant

The plaintiff may, at any time before the statement or defence has been filed, or after it has been filed, before taking other proceeding in that suit (save any interlocutory application), by notice in writing to the clerk, wholly discontinue his suit against all thereupon he shall pay such defendant's costs of the suit, or if the suit be not wholly discontinued, the costs occasioned by the part of the claim so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to discontinue the suit without leave of the court, but the court may at any time before judgment, upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the suit to be discontinued or any part of the claim to be struck out. The court may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence to be withdrawn or struck out, but is shall not be competent to a defendant to withdraw his defence or any part thereof without such leave.

91. Notice of discontinuance

The clerk shall on receipt of such notice in writing forthwith give notice to the defendant of such discontinuance or withdrawal.

92. Costs of discontinued suit

The defendant may recover the costs of a suit which has been discontinued under rule 90 in the same way as if such costs had been granted by a judgment of the court.

93. Subsequent action may be stayed

If any subsequent suit shall be brought before payment of a discontinued suit, for the same, or substantially the same cause action, the court may, if it thinks fit, order a stay of such subsequent suit, until such costs shall have been paid.

Peremption of suits

94. Sections 186 to 193 inclusive of the Code to apply

Sections 186 to 193 of the Code shall apply in any cause or matter in the court.

95. When a new trial may be granted

A new trial may be granted on the application of either party to the suit—

- (a) where fraud or violence has been employed, or documents subsequently discovered to be forged have been made use of by the opposite party;
- (b) when new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the hearing of the suit, has since been discovered or become available;
- (c) when it appears to the court to be necessary for the ends of justice.

96. Application when to be made

Application for a new trial must be made—

- (a) if judgment was given against the defendant in default, within three months from the date when execution of the judgment was effected or from the earliest date on which anything was paid or done in satisfaction of the judgment;
- (b) in all cases, within three months from the date of the judgment.

97. Forgery, fraud or new evidence

Where a new trial is applied for on the grounds of forgery, fraud or new evidence, the period of three months mentioned in rule 96 shall only run from the day on which the forgery or fraud shall have been known or the new evidence discovered, provided that, in the last two cases, there is written proof of the day on which such fraud or new evidence shall have been discovered.

98. Procedure to obtain new trial

- (1) Every application for a new trial shall be made in writing to the court. Such application shall set forth shortly the reasons for which such new trial is applied for, and, if the court requires it, it shall be supported by affidavit.
- (2) The court may in its discretion refuse the application, but if it is of opinion that the reasons alleged are *prima facie* sufficient to warrant a new trial, it shall issue a summons calling upon the other party to show cause why a new trial should not be granted.

99. Court may impose terms

The court may grant an order for a new trial on such terms, if any, as to costs and finding of security for the amount for which the judgment was given at the first trial, or such other terms as to the court may seem fit.

100. Date for new trial

When a new trial is granted, the court shall fix a date for the hearing and the new trial shall proceed in all respects as if it had been a first trial:

Provided that, if the adverse party does not appear on the return of the summons to show cause why a new trial should not be granted and an order is made granting the application, the court shall summon the adverse party to appear on the date fixed by the court for the new trial.

101. Stay of execution

The court may grant a stay of execution pending the hearing of the new trial.

102. What issues may be raised at trial

It shall not be competent for the applicant to raise any other issue at the trial except those alleged in his application for such new trial.

103. Effect of judgment for the applicant

If, at the new trial, judgment be given in favour of the applicant, all sums of money paid under the first judgment shall be returned to the applicant and the parties shall be put back in the same position as if there had been no first trial, unless the court orders otherwise.

104. No new trial of a new trial

Whenever an application for a new trial shall have been made and refused, or whenever a trial has been granted and adjudicated upon, it shall not be lawful for the same party to apply again for a new trial of the same suit or a new trial of such new trial.

105. Procedure where new trial is ordered by Supreme Court

If, on appeal, a new trial be ordered by the Supreme Court, either party may file with the clerk the original judgment or order of the Supreme Court, or a copy of the formal judgment or order certified to be correct by the Registrar of the Supreme Court, and within one month after filing such judgment or order, such party shall apply to the court to fix a date for hearing of such new trial and a summons shall be issued to the adverse party to appear on the date fixed for the new trial and the trial shall then proceed in all respects as if it had been a first trial, subject however to any order made by the Supreme Court.

Legal Aid

106. Legal Aid

Any person may on application to the court and in the courts entire discretion, be admitted to sue or defend as a pauper if the court is satisfied—

- (a) that he is not worth Rs.300, his wearing apparel and the subject matter of the suit or other proceeding before the court excepted; and
- (b) that he has reasonable grounds for suing or of defence; and
- (c) that having regard to the complexity of the case or to exceptional circumstances, it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his case.

107. Court may inquire before deciding application

The court may examine the applicant on oath or take such other evidence or make such inquiry as may be requisite to enable it to decide on the application.

Where any person is admitted to sue or defend as a pauper, the court may assign an advocate to assist the person so admitted and an advocate so assigned shall not be at liberty to refuse his assistance unless he satisfies the court that he has some good reason for refusing. The court shall have the same discretionary powers to assign an advocate to assist a person who has been admitted to sue or defend as a pauper in the preparation of an appeal from any decision or order of the court.

108. Assignment and remuneration of advocate

Where an advocate has been assigned to any person under the provisions of the last preceding rule, the remuneration of such advocate for the services for which he had been so assigned shall be of such amount and according to such scale as may be prescribed by rules of court.

109. Fees of court

Where a person is admitted to sue or defend as a pauper he shall not be liable to pay any fees or court.

110. Recovery of fees and remuneration

If the court orders any costs to be paid to any person admitted to sue or defend as a pauper all the fees which would have been paid by such person if he had not been admitted to sue or defend as a pauper and the remuneration paid or payable to the advocate if one has been assigned to such person, shall be deducted from the amount of the costs so ordered to be paid and shall be paid to the clerk for the benefit

of the Republic and may be covered by the Attorney General in the same manner as if the order for costs had been made in favour of the Republic. Such costs may be taxed as in other cases.

111. Advocate to sign process and disbursement

No process shall be served, and no application shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his advocate, unless it is signed by his advocate, if any advocate has been assigned to him.

No advocate shall be bound in any suit brought by or against paupers to make any disbursement of his own moneys.

Of furnishing of security

112. When security may be required

The court may, on the application of the defendant, require the plaintiff to give security for costs in all cases in which under the Civil Code such security may be required and also when the plaintiff is known to be insolvent.

113. Time within which security is to be furnished

Whenever a party to a suit shall have been ordered to furnish security, the court shall, by the same order, fix the time within which such security shall be furnished by such party and accepted or objected to by the other party.

114. Notice of sureties offered

The party to a suit ordered to give security shall give notice to the other party or his advocate, of the persons intended to stand as sureties. Such notice shall state the names of the persons suggested as well as the means of such persons.

115. Objections

If the surety is objected to, the matter shall be summarily dealt with by the court.

Provisional seizure and attachment

118. Sections 280 to 287 of the Code shall apply

- (1) At any time after a suit has been commenced, the plaintiff may apply to the court to seize provisionally any movable property in the possession of the defendant in the suit or to attach provisionally any money or movable property due to or belonging to the defendant in the suit which is in hands of any third party.
- (2) The provisions of sections 280 to 287 of the Code shall, *mutatis mutandis*, apply to an application made to the court under sub-rule (1).

Forms

119. Forms

The forms set out in Schedule C of the Code shall be used with the necessary adaptations, modifications and exceptions for the respective purposes therein mentioned, in any cause or matter in the court.