

CAYMAN ISLANDS

No. 11

X



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THE JUDICATURE LAW
(Law 11 of 1975)

MEMORANDUM OF OBJECTS AND REASONS

The Judicature (Administration of Justice) Law (Cap. 74) has been superseded for the most part by the Grand Court Law and Rules and, of the sections remaining out of the original two-hundred and thirty-five, many are framed in the language of the nineteenth century. It is considered desirable, therefore, to restate this Law in amended form and in up-to-date language in compliance with the present practice of the courts. In its new form it deals with the duties of the Clerk of the Court, the Bailiff, the empanelling of and trial by Juries, the execution of the process of the courts, scales of costs and fees and certain procedural matters not covered by the new laws. It is proposed to call the Law in its new form "The Judicature Law". The opportunity is taken of repealing the Debtors Law (Cap. 34) and the Judgment (Lien) Law (Cap. 72) and consolidating them with this Law.

THE JUDICATURE LAW
Arrangement of Sections

Section

1. Short title and commencement
2. Interpretation
3. Duties of the Bailiff
4. Receipt books as discharges for payments
5. Bailiff's monthly returns
6. Irregularity in form or execution of warrant
7. Limitation of action in relation to things done pursuant to court laws
8. Interpleader
9. Rights of claimant under section 8
10. Replevin
11. Security to be given by replevisor
12. Composition of juries
13. The jury list
14. Panel of jurors for court sessions
15. Summons to jurors
16. Allowance to jurors
17. Talesmen
18. Effect of informalities
19. Ballotting for jurors
20. Number of jurors in criminal cases
21. Challenges
22. Foreman of the jury
23. Jury may be permitted to separate
24. Discharge of jury before verdict
25. Juries in civil cases
26. Power of court to make orders relating to certain property
27. Power of amendment
28. Reserved judgment by person ceasing to be a judge of the court
29. Sums due to persons under disability
30. Costs and court fees
31. Amendment of judgment
32. Satisfaction of judgment debts
33. Assignment of judgments
34. Execution to enforce payment ordered by the court
35. Process if default made in payment under section 29
36. Enforcement of process under equitable jurisdiction
37. Execution procedure
38. Time of execution
39. What may be taken in execution
40. Sale and custody of goods taken in execution
41. Securities for money taken in execution
42. Seizure and sale of realty
43. Sale of land generally to be by public auction
44. Enquiry into the means of a judgment debtor
45. Court may commit to prison a person found to be evading payment of a judgment debt
46. Proceedings on order of commitment
47. Attachment of property in the hands of a garnishee
48. Effect of a summons of attachment
49. Garnishee disposing of property attached
50. Detention of attached property
51. Property in the hands of a public officer in *custodia legis*

52. Examination of a garnishee
53. When there are several claimants to attached property
54. Record to be kept of attachments and proceedings
55. Garnishee proceedings
56. Warrants of possession
57. Summonses and other process
58. Course if plaintiff fails to appear or prove his case at the trial of an action
59. Course if defendant does not appear
60. Limitation
61. Repeal of Cap. 74, Cap. 34 and Cap. 72.

CAYMAN ISLANDS

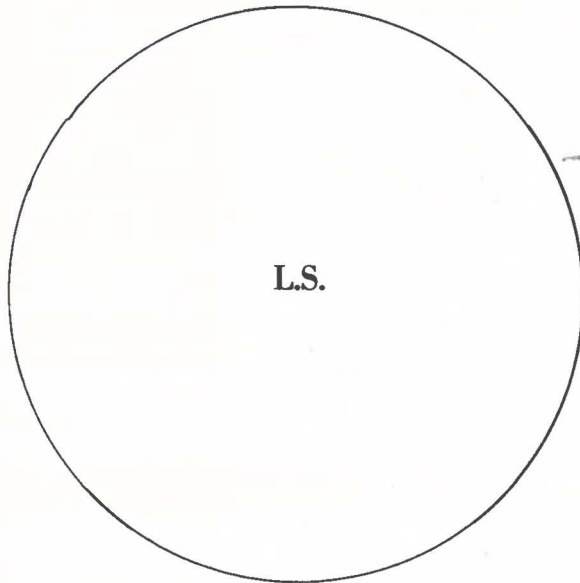
LAW 11 of 1975

I assent

T. RUSSELL

Governor

29th October, 1975.



L.S.

**A LAW TO REPEAL AND RE-ENACT IN AMENDED FORM
THE JUDICATURE (ADMINISTRATION OF JUSTICE) LAW
(CAP. 74).**

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement.

1. This Law may be cited as the Judicature Law and shall come into operation on a day to be appointed by the Governor by notice published in the Gazette.

Interpretation.

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

Law 9 of 1969.

“advocate” means a legal practitioner authorised to practise as such under the Legal Practitioner’s Law, 1969;

Law 8 of 1975.

“Bailiff” and “Clerk of the Court” have the meanings ascribed to them by the Grand Court Law;

Law 9 of 1975.

“court” means the Grand Court or a Summary Court as the context may require and, in the case of the Grand Court, includes a judge of the Grand Court, and in a Summary Court includes the person presiding over such court;

“Court of Appeal” has the meaning ascribed to it in the Court of Appeal Law;

“goods” includes chattels and other movable property;

Law 8 of 1975.

“Grand Court” has the meaning ascribed to it in the Grand Court Law;

“rules” means rules of court in force at the time of the coming into operation of this Law and not since revoked or replaced, and rules relevant to this Law made under the provisions of any of the following laws —

Law 10 of 1973	The Affiliation Law;
Law 9 of 1975	the Court of Appeal Law;
Law 13 of 1975.	the Criminal Procedure Code ;
Cap. 41	the Divorce Law;
Cap. 49	the Evidence Law;
Law 8 of 1975.	the Grand Court Law;
Law 17 of 1975.	the Poor Persons (Legal Aid) Law;
Law 18 of 1975.	the Succession Law; and
Law 10 of 1975.	the Summary Jurisdiction Law ;

“prescribed” means prescribed by this Law or any rule;

Law 10 of 1975. “Summary Court” has the meaning ascribed to it by the Summary Jurisdiction Law.

Duties of the Bailiff. 3. The Bailiff shall attend the court when required by the court so to do and shall serve all process, summonses and orders as shall be entrusted to him for service and shall execute all warrants, precepts and writs issued out of the court and shall, in the execution of his duties, conform to the rules and, subject thereto, shall obey the orders of the court.

Receipt books as discharges for payments. 4. (1) The Bailiff shall be supplied with two receipt books, one to be used in every alternate month and every such receipt book shall be furnished with counterfoils, with consecutive numbers printed thereon, and whenever the bailiff, by virtue of any warrant to levy, committment or other writ of execution, receives any money, he shall give to the person paying the same a receipt on one of the printed forms contained in such book, and shall note on the corresponding counterfoil of such book, the name of the process, the title of the suit in which it was issued and the amount for which the receipt is given.

(2) No payment shall be deemed to be valid, or to discharge the person making the same, unless a receipt has been given in the form aforesaid.

Bailiff's monthly returns. 5. (1) On the last working day of every month the bailiff shall make a return to the Clerk of the Court of all writs of execution, whether against the person or against goods, which remained in his hands at the beginning of such month not fully executed and all such writs as have been entrusted to him for execution during such month, together with a statement against each writ of what has been done thereunder, supported by the relevant receipt books.

(2) The Clerk of the Court shall thereupon examine and verify the said return and compare it with the receipt counterfoils.

Irregularity in form or execution of warrant. 6. No officer of a court in executing any warrant of a court of competent jurisdiction and no person at whose instance any such warrant is executed; shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it; but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity of informality against the party guilty thereof:

Provided that in such action he shall recover no costs unless the damages awarded exceed twenty dollars.

Limitation of action in relation to things done pursuant to court laws.

7. Every action or prosecution commenced against any person for anything done in pursuance of any law relating to a court of competent jurisdiction or of any rules shall be commenced within three months of the act and not afterwards or otherwise.

Interpleader.

8. When any claim is made to or in respect of any goods taken in execution under the process of a court of competent jurisdiction, the Clerk of the Court may, upon application by the bailiff, as well before or after any action brought, summons before the said court the party issuing such process and the party making the claim and the court shall adjudicate the matter and make such order between the parties and between the parties and the Bailiff, including any order for costs or damages as it shall see fit; and upon the issue of a summons for the above purpose every suit touching the same parties and the same subject matter shall be stayed.

Rights of claimant under section 8.

9. Where a claim is made under section 8, the claimant may deposit with the Bailiff a sum equal to the value of the goods claimed (such value to be fixed by appraisal in the event of dispute), whereupon the Bailiff shall deliver the goods up to the claimant and pay into court the money deposited to abide the decision of the court upon such claim, or, in the alternative, the claimant may pay to the Bailiff the appropriate sum chargeable by the Bailiff for keeping possession of the goods pending the court's decision thereon, in which case the Bailiff shall retain the goods pending such decision.

Replevin.

10. When any distress or any goods subject to replevin are taken under the authority of a court of competent jurisdiction, the Clerk of the Court may, subject to the rules, approve of and grant replevin bonds and issue all necessary process in relation thereto for execution by the Bailiff, and shall, at the instance of the person whose goods have been distrained or taken, cause the same to be replevied to such person on his giving the prescribed security.

Security to be given by replevisor.

11. A replevisor shall at the time of replevying give the Clerk of the Court such security as the Clerk of the Court deems sufficient to cover the alleged rent or damages in respect of which the distress has been made or the goods taken, together with probable costs of the cause in the court, and conditioned that the replevisor shall, within two weeks of the giving of the security, commence an action of replevin in respect of the goods distrained or taken and prosecute such action without delay and abide by the outcome thereof.

Composition of juries. Cap. 45.

12. Every person whose name appears upon the last register of voters compiled under section 16 of the Elections Law and who has not attained the age of sixty years is liable to serve on juries in the court upon the trial of all issues directed to be tried by a jury:

Provided that the following persons are exempt from jury service —
the Governor;
members of the Legislative Assembly;
judges, magistrates and justices of the peace;
recognised pastors and ministers of religion;
persons on the roll of advocates and officers of courts of competent jurisdiction;
medical practitioners;
constables;
registrars of land and of births marriages and deaths; and
persons who, by reason of poverty, are unable to attend:

Provided further that persons who have been convicted on indictment before the court who have not received a free pardon are disqualified from jury service.

- The jury list.** 13 On or before the first day of October in each year the Bailiff shall make an alphabetical list of all persons in the Islands liable to serve on juries with the surnames and other names written in full and with the description and address of each person and shall be subject to a penalty, not exceeding twenty dollars, for the omission of every name which, but for his wilful default or negligence, he should have inserted therein, and shall transmit such list to the Clerk of the Court on or before the eleventh day of the said month and such list shall be called the jury list and the names entered therein shall form the panel of jurors.
- Panel of jurors for court sessions.** 14. At least twenty-one days before each session of the court, the Clerk of the Court shall take from the jury list the names of thirty-six jurors who have not served as jurors in the last six preceding sessions of the court and shall summon them to appear on the day fixed for the next session of the court.
- Summons to jurors.** 15. The Bailiff shall serve the summonses issued under section 14 at least six days before the persons served are required thereby to make appearance, either personally or by leaving notice at the person's address, and every person so summoned who not having been excused by the court fails to attend or, having attended, refuses to be sworn as a juror, is guilty of an offence and liable to a fine not exceeding thirty dollars.
- Allowance to jurors.** 16. Each juror shall be entitled to an allowance of ten dollars per day for his attendance at court together with a travelling allowance not exceeding twenty cents for each mile travelled in order to attend and the Clerk of the Court shall issue to each juror a warrant, countersigned by the court, authorising the Treasury to pay to each juror the amount so due to him.
- Talesmen** 17. If on the trial of any matter, the number of jurors available is for any reason reduced below the number required, the jury panel shall be made up by talesmen selected by the Clerk of the Court from bystanders or others attending the court and eligible for jury service and any talesman who refuses to serve is guilty of an offence and liable to a fine not exceeding thirty dollars.
- Effect of in-formalities.** 18. No challenge to the array shall be allowed, nor shall the array be quashed, nor shall any judgment after verdict upon any indictment be stayed or reversed by reason of the neglect or default of any person to do or perform any acts or requirements in relation to the preparation of the jury lists, or in the making of jury panels.
- Ballotting for jurors.** 19. The jury to be empanelled for the trial of any case in the court shall be ballotted for by the Clerk of the Court, subject to all the rights of challenge.
- Number of jurors in criminal cases.** 20. (1) On trials for murder or treason, twelve jurors shall form the array.
- (2) On trials on indictment in cases other than murder or treason, seven jurors shall form the array.
- (3) Where in the course of a criminal trial any member of the jury dies or is, for any reason, discharged by the court, the jury shall, so long as their number is not reduced by more than one, remain for all purposes of that trial properly constituted and the trial shall proceed accordingly, and if the jury so remaining shall all concur in a verdict, such verdict shall be unanimous for the purpose of this Law.

(4) On a trial for murder or treason, no person shall be found guilty save upon the unanimous verdict of the jury.

(5) On a trial for murder, the accused shall be convicted of manslaughter if found guilty thereof by not less than nine members of the jury.

(6) On a trial on indictment for an offence other than murder or treason, the accused shall be convicted if found guilty of the offence by not less than five members of the jury.

(7) The majority verdict of a jury shall not be accepted until after the lapse of one hour from the retirement of the jury to consider their verdict.

(8) Whenever the verdict of a jury is not unanimous, the court may direct the jury to retire for further consideration of their verdict.

Challenges.

21. In every trial on indictment, the person arraigned before the court and counsel appearing on behalf of the Crown shall be permitted as many peremptory challenges of jurors as there are jurors constituting the array and shall not be required to assign any cause for such peremptory challenges; in addition further challenges may be made by either party for cause given and, if such further challenge is objected to by the opposite party, the question shall be decided by the court without a jury and the person challenged shall be examined on oath and required to answer all lawful questions relevant to the challenge.

Foreman of the jury.

22. When the jurors have been duly sworn they shall appoint one of their number to be foreman who shall preside at the meetings of the jury for the consideration of their verdict and may ask any information from the court which may be required by any of the jurors; and if the majority of the jury do not, within such time as the court may consider reasonable, appoint a foreman, then the foreman shall be appointed by the court.

Jury may be permitted to separate.

23. (1) Upon the trial by jury of any person for any offence the court may, at any time it thinks fit, permit the jury to separate and, in that behalf, the court may permit an application to be made before, or during the trial, either in court or in Chambers.

(2) When a jury have not been permitted to separate, proper provision shall be made to prevent the jury from holding communication with any outside person:

Provided that the court may for sufficient cause allow one or more of the jurors to separate from the others, but not so as to hold communication with outside persons except with the leave of the court, so, however, that the jurors allowed to separate shall remain in the charge of one of the persons to whose charge the jury is committed.

(3) The Court may give such directions as it thinks fit for the accommodation, refreshment and custody of the jury.

Discharge of jury before verdict.

24. (1) The court may discharge a jury before it has reached a verdict

(a) if it appears, after the lapse of one hour from the retirement of the jury to consider its verdict, that the jury will be unable to arrive at a verdict; or

(b) if the number of the jury is reduced by more than one; or

(c) if for illness or other reason the accused person is unable to remain at the bar; or

(d) for other cause thought by the court to be sufficient.

(2) When a jury is so discharged the court may adjourn the case for further trial at such time as it considers convenient.

Juries in civil cases.

25. When one party to a civil cause before the court applies for the case to be tried by a jury and the court is of the opinion that the matter is one that can be properly so tried a jury of seven persons shall be empanelled for the trial of the issues between the parties and the verdict declared by the foreman to be that of five or more of such jury shall be accepted by the court.

Power of court to make orders relating to certain property.

26. A court may upon the application of any party to any cause or matter, and upon such terms as may appear just, make any order for the detention preservation or inspection of any property or thing relevant to such cause or matter and to authorize any persons to enter upon any land or buildings in the control of any party to such cause or matter for the purpose of taking any sample or making any observation or experiment which may be expedient for the purpose of obtaining information or evidence, and the court and any jury before whom the case is tried may inspect any available property or thing concerning which any question may arise.

Power of amendment.

27. For the purpose of determining the real question in issue between parties in civil proceedings, a court may at any time amend any defect or error in such proceedings, with or without an award of costs and upon such other terms as to the court appears fit.

Reserved judgment by person ceasing to be a judge of the court.

28. If a judge or magistrate having reserved judgment, ceases to be a judge or magistrate of the court in which judgment is reserved before he has delivered his judgment, he may, at any time within two months after he has so reserved judgment, lodge with the Clerk of the Court his written judgment of the matter reserved and such written judgment shall, at the first opportunity, be read in the court by a judge or magistrate of the court and such judgment shall take effect in all respects as if the person who reserved judgment had continued to be a judge or magistrate of the court.

Sums due to persons under disability.

29. Any sum of money to which any person under a disability may be found or declared by a court to be entitled may be ordered by the court to be paid into the Treasury against a receipt by the Treasury, there to be held and dealt with at the direction of the court.

**Costs and court fees.
Schedule A, B & C.**

30. (1) The scale of general court fees, advocates costs and Bailiff's fees shall be on the scale laid down in schedules "A" "B" and "C" respectively and by any rules and the Governor in Council may, on the recommendation of the Judge of the Grand Court, at any time amend the said schedules.

(2) In every case in which any party recovers judgment against another, such party shall have judgment for the court fees payable under this Law or any rule which may be requisite to obtain such judgment.

(3) Where in any proceedings in any court an advocate has been employed or other costs or charges have been incurred then, subject to any other provision of this Law or any other law and to any rule, the awarding of such costs and charges shall be in the discretion of the court which may, by its judgment, award them to the successful party in accordance with the prescribed scale.

(4) Where a court orders taxation of costs, such costs shall be taxed by the Clerk of the Court and shall be subject to review by the court.

(5) Costs may be awarded to or against the Crown.

(6) Costs having been ascertained are a judgment enforceable as such.

Amendment of judgment.

31. A court may —

- (a) at any time with the consent of the parties to a case; or
- (b) within thirty days of the delivery of a judgment, upon the application of a party or of its own motion, with notice in either case to all the parties concerned,

amend such judgment for the purpose of correcting any arithmetical or technical error or inadvertance apparent upon the face of the judgment.

Satisfaction of judgment debts.

32. Where a court has given judgment for the payment of any sum of money such sum shall be payable forthwith, and

- (a) if the judgment sum or any part thereof is paid into court, the Clerk of the Court shall enter satisfaction in full or *pro tanto* as the case may be;
- (b) if there are cross-judgments between the parties, the difference only shall be payable by the party liable to pay such difference;
- (c) the judgment creditor, his personal representative or advocate shall, upon receiving full satisfaction from the judgment debtor, if so requested in writing by the judgment debtor, authorise the Clerk of the Court in writing to enter satisfaction in full upon the court record and, should he fail so to do within one week of being so requested, he shall be liable to a penalty not exceeding \$100 payable to the judgment debtor at the order of the court.

Assignment of judgments.

33. Judgment referred to in section 32 may be assigned in the following form or in a form to the like effect —

“Be it remembered that on the _____ day of 19 I, _____ A.B., of _____ etc., have assigned to E.F., _____ of _____ etc., a judgment obtained in the _____ court of the Cayman Islands the _____ day of _____ 19 _____ in case no. _____ by me the said A.B., against C.D., of _____ etc., for the sum of \$ _____ (for principal, interest, costs etc.) and I have received the sum of \$ _____ in full satisfaction thereof.

(sgd.) A.B.”

and the Clerk of the Court shall keep a record of such assignments brought to his notice in writing and process shall not afterwards issue upon the said judgment except on the order of the assignee, his personal representatives or assigns or his advocate.

Execution to enforce payment ordered by the court.

34. Whenever a court has made an order for the payment of money the amount shall be recoverable by execution against the goods of the party against whom such order is made; and the Clerk of the Court, at the request of the party prosecuting the order shall, after the expiration of seven days from the making of such order, or sooner if the court so directs, issue under the seal of the court a

warrant of execution to the Bailiff who shall levy, or cause to be levied, by distress and sale of the goods, if any, of the indebted party such sum of money as is so ordered together with the costs of the execution.

Process if default made in payment under section 29.

35. If default is made in making any payment ordered under section 29 the court may order a warrant of execution to issue to the Bailiff, who shall levy, or cause to be levied, by distress or sale of the goods if any, of the person making default, a sum of money equal to the amount ordered to be paid to the Treasury, together with the costs incurred by reason of such default, and the sum so levied shall be paid to the Treasury to be applied as if it had been paid by the person ordered to pay it.

Enforcement of process under equitable jurisdiction.

36. For the due execution of any judgment or order made under its equitable jurisdiction a court may order, and the Clerk of the Court shall seal and issue and the Bailiff shall execute, a writ or warrant of possession or execution or other process for carrying into effect such judgment or order in such manner as, subject to the rules, may be provided by the court.

Execution procedure.

37. In every warrant of execution issued against the goods of any person the Clerk of the Court shall cause to be inserted the sum of money and costs adjudged, with the sum allowed in costs and Bailiff's fees for the execution of such warrant; and if the party against whom such execution is issued, before sale of the goods, pays, or causes to be paid or tendered to the Clerk of the Court or to the Bailiff such sum of money together with costs, or such part thereof as the person entitled thereto agrees to accept in full discharge of his claim, the execution shall be superseded and the goods released.

Time of execution.

38. The Clerk of the Court shall record the date and time of every application made to him for the issue of a warrant to attach goods and shall make a note of the same on the warrant and each warrant shall be executed in chronological order so far as is practicable.

What may be taken in execution.

39. The Bailiff or officer lawfully executing any process against goods may seize and take away such goods other than the wearing apparel, bed and bedding of the judgment debtor and his family or the tools and implements of his trade to a value of \$100, which to that extent shall be protected from seizure, and the Bailiff or officer may also seize and take money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties and securities belonging to the judgment debtor.

Sale and custody of goods taken in execution.

40. Goods taken in execution which are not of a perishable nature shall not be sold until after the end of at least five days next following the taking, or until such notice has been given of the time and place of the sale as may be required by the rules; and until sale such goods shall be deposited by the Bailiff in some fit place or remain in the custody of a person approved by the Bailiff; and it shall be lawful for the bailiff to act as broker or appraiser for the purpose of valuing and selling any goods.

Securities for money taken in execution.

41. The Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties and other securities for money which have been lawfully taken as security for or towards the amount to be levied in execution for the benefit of the judgment creditor who may sue in the name of the judgment debtor or any person in whose name the judgment debtor might have sued for recovery of the sums secured or made payable thereby upon maturity thereof.

Seizure and sale of realty.

42. (1) If the court is satisfied that a person against whom judgment has been obtained has no sufficient goods which can conveniently be taken to satisfy such

judgment, the Court may, if it thinks fit, on application of the judgment creditor, make an order for the sale of the estate or interest of the judgment debtor in any lands, at any time and place and subject to such conditions as the court thinks fit.

(2) The court may direct such enquiries to be made as may be necessary for the proper carrying out of such order.

(3) If it appears on such enquiries that any person other than the judgment creditor is entitled to any charge on the land every such person shall be served with notice of the order, and shall be bound thereby and may attend the proceedings under the order and have the benefit thereof; and the proceeds of sale shall, after payment thereof of all costs and charges attending the sale, the order for sale and the enquiries aforesaid, be distributed among the persons found entitled thereto according to their respective priorities.

(4) When any land is sold by order of the court it shall give all necessary and proper directions for the carrying out of such order and, if it sees fit, order the bailiff to sell such land on such terms of remuneration as are prescribed in schedule C and it shall be lawful for the Bailiff to conduct such sale.

Schedule C.

Sale of land generally to be by public auction.

43. (1) All sales of land made under and by virtue of the equitable jurisdiction of the court, as well as in execution of orders made under section 42 shall be made by public auction according to the orders of the court, unless the court for special reason approves a sale by private treaty.

(2) After the sale of any lands by way of execution, the court shall grant a certificate to the purchaser to the effect that he has purchased the right title and interest of the judgment debtor in the property sold; and such certificate shall be liable to the same stamp duty as a conveyance on sale or as the case may be and shall operate as a muniment of title in respect of the interest thereby transferred.

(3) For the purpose of this section and section 42 "land" includes all corporeal hereditaments and any legal or equitable interest therein.

Enquiry into the means of a judgment debtor. Schedule D.

44. A party who holds an unsatisfied judgment in a court for the payment of any sum of money may obtain a summons from such court in the form provided in Schedule D to be served personally upon the person to whom it is directed, requiring him to appear at such time and place as may be prescribed to answer such summons and to be examined on oath touching his estate and effects, and the manner and circumstances in which he contracted the debt or incurred the liability which is the subject of the action which has been brought against him and as to the means and expectation he then had, and as to the property and means he still has, of discharging the debt or liability and as to the disposal he has made of any property; and the person obtaining such summons and all other witnesses whom the court thinks requisite, may be examined upon oath or affirmation touching the enquiries hereby authorised to be made; and the costs of such summons and all proceedings thereon shall be deemed to be in the cause.

Court may commit to prison a person found to be evading payment of a judgment debt.

45. (1) If a party summoned under section 44 fails without good cause to attend as required or having attended, refuses to be sworn or affirmed or to give satisfactory answers to the satisfaction of the court or, if it appears to the court upon the evidence that such party, with reference to the debt, the subject matter of the action, has obtained credit by fraud or false pretences or in breach of trust or has wilfully contracted such debt or liability without having

at the relevant time a reasonable expectation of being able to discharge the same, or has charged, concealed or made away with his property with intention to defraud his creditors or any of them or is wilfully refusing to pay the judgment debt when it is in his power so to do, the court may order that such party be punished by being committed to prison for a period not exceeding sixty days or, in case of the Grand Court, one year or until the judgment debt is satisfied.

(2) Subject to subsection (1) and to any specific provision of this or any other law, no court is empowered to commit any person to prison upon the ground only that he has failed to discharge a civil debt, not being in the nature of a fine or penalty for an offence committed by the debtor.

Proceedings on order of commitment.

46. (1) Whenever an order of commitment has been made under this Law, the Clerk of the Court shall issue under the seal of the committing court a warrant of commitment directed to the Bailiff or to a constable to arrest and take and to a gaoler to receive the body of the person committed into a prison and there detain him as a convict until such time as he is discharged or released under the provisions of this or any other law.

(2) Every warrant of commitment shall bear the date on which the order for commitment was made and shall remain in force for one year from such date and no longer, but no commitment order shall be drawn up or served.

(3) No imprisonment under this Law shall operate to discharge a debt or other cause of action or deprive the judgment creditor of his right to levy execution against the goods of a judgment debtor or of any other remedy available to him.

Attachment of property in the hands of a garnishee.

47. Where a judgment debtor is beneficially interested in any monies, securities for money, goods or other property (other than any interest in lands), in the custody or control of any other person in the Islands, or where such other person, hereinafter called "the garnishee", is indebted to such judgment debtor, the Clerk of the Court shall, on the filing of an affidavit to that effect, and the lodging by the judgment creditor of a statement of claim, alleging the matters aforesaid, issue a summons, to be termed "a summons of attachment" which shall be intitled in the action, and which from the time of service on the garnishee shall bind the property of the judgment debtor in the hands of such garnishee in satisfaction of the judgment.

Effect of a summons of attachment.

48. From the time of service upon a garnishee of a summons of attachment, all property in the Islands (other than any interest in land), to which the judgment debtor is beneficially entitled, whether solely or jointly with others, and which at the time of service of the said summons or at any time before the same is withdrawn, is or shall be in the custody or control of the garnishee, and all debts due or accruing due by the garnishee to the judgment debtor at or during such time as aforesaid shall, to the extent of the judgment debtor's interest in them, and subject to any *bona fide* prior title thereto, or lien or charge thereon, be respectively attached in the hands of the garnishee, to satisfy the claim of the judgment debtor.

Garnishee disposing of property attached.

49. Any garnishee who, without leave or order of the relevant court, at any time after the service of a summons of attachment and before the summons is withdrawn, knowingly and wilfully parts with the custody or control of any property attached in his hands, or removes the same out of the Islands, or sells or disposes of the same, or pays over any debt due by him to the judgment debtor, except only to the use of the judgment creditor, shall be liable to attachment

and to pay such damages to the judgment creditor as the court shall award:

Provided that the court shall not award a larger sum by way of damages than it is competent to award in a suit for damages, and such award shall bar any suit for such damages.

Detention of at-
tached property.

50. In all cases where it is made to appear that there is reasonable cause to believe that any movable property attached is in danger of being removed out of the Islands, or of being sold or otherwise disposed of without the leave of a court having jurisdiction, the court may, by an order in writing, direct the Bailiff to seize such property and retain it subject to the order of the court, or may make any other order for the delivery and custody of such property:

Provided that the court may order such property to be released upon such terms as to security as may appear just.

Property in the
hands of a public
officer or in
custodia legis.

51. (1) Property in the hands or control of any public officer in his official capacity shall be liable to attachment in execution of a judgment with the consent of the Governor in Council, and property in *custodia legis* shall be liable to attachment by order of a court.

(2) Attachment under subsection (1) shall take effect from the service of a summons on the public officer or from the date of the order of the court as the case may be.

Examination of a
garnishee.

52. (1) Every garnishee shall appear before the court of summons on the day specified in such summons and on such subsequent days as the court shall appoint, and of which he has received due notice, to be examined touching any property which may have been attached in his hands.

(2) Upon the day so appointed for such investigation, and at any adjournment thereafter, the court may, of its own motion, or at the instance of any person interested in the enquiry, summon any person whom it may think necessary, and examine him in relation to such property, and may require the garnishee, as well as the person summoned as aforesaid, to produce all deeds and documents in his possession or power relating to such property.

(3) A court may, upon such investigation, order that any such part of the property attached as consists of money and bank notes, or a sufficient part thereof, shall be paid over to the judgment creditor; or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the judgment, shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be applied in satisfaction of the judgment, and that the summons be discharged.

(4) If the garnishee does not dispute his liability, and fails to comply with the order of the court, the court may order execution to issue against him for the amount of the property attached in his hands, or of such part thereof as is sufficient to satisfy the judgment and all costs of the proceedings, and execution may issue accordingly.

(5) If the garnishee disputes his liability, the court may order that any issue or question necessary for determining his liability be tried and determined in any manner in which the question or issue in an action may be tried, or with the consent of the parties may dispose of the question between them in a summary manner.

When there are several claimants to attached property.

53. Whenever there are several claimants to any property attached or to any interest therein, the court concerned may in its discretion summon before it all the claimants and may make such orders as are in subsection (5) of section 52 mentioned for the ascertainment of their respective rights, and for the custody of the property in the meanwhile, or with the consent of the parties, may dispose of the adverse claims in a summary manner.

Record to be kept of attachments and proceedings.

4 The Clerk of the court shall keep a record of all attachments and proceedings thereon, with names, dates and statements of amounts recovered and otherwise; and copies of any entries made therein may be taken by any person upon application to the court having jurisdiction.

Garnishee proceedings.

54. (1) The payment of debts or the delivery of property by a garnishee under an order of a court, or execution levied upon him in respect thereof, shall be a valid discharge to the garnishee from all claims to such debts or property, even though the attachment be set aside or the judgment reversed.

(2) An attachment of goods in the hands of, or a debt due by, a garnishee may be set aside at any time by an order of the court making the same and, with the consent of the judgment creditor it shall be dissolved on the filing in court of a memorandum of such consent signed by the judgment creditor in the presence of the Clerk of the Court.

(3) A court may stay any proceedings in a suit commenced against a garnishee upon such terms as it thinks fit.

(4) A court may allow such reasonable sum to a garnishee for his attendance and loss of time up to the scale allowed to witnesses and the amount so allowed shall be paid by the person enforcing the attachment and shall be recoverable by him as costs of execution unless the court orders otherwise.

(5) The costs of an application for a summons of attachment and proceedings incidental thereto shall be in the discretion of the court before which the proceedings are brought.

Warrants of possession.

56. (1) After any judgment affecting possession of land the court may, if it thinks fit, issue a warrant to the Bailiff to give possession of the land in question as specified in the warrant and as the court may direct.

(2) A warrant issued to the Bailiff under subsection (1) shall justify him in entering upon the premises named in the warrant, with such assistants as he deems necessary, and in giving possession accordingly; but no entry under such warrant shall be made except between the hours of eight in the morning and four in the afternoon.

(3) Every warrant issued under subsection (1) shall bear the date on which it is issued, and shall continue in force for six months from such date and no longer; but no order for delivery need be drawn up or served.

(4) No warrant under subsection (1) shall be issued after the expiration of six months after the last day named by the court in the order for delivery of possession except by order of the court.

Summonses and other process.

57. (1) Any parties to a suit or any other proceeding may obtain at the office of the Clerk of the Court summonses to witnesses, with or without a clause requiring the production of books, deeds, papers and writings, in their

possession or control, and in any such summons any number of names may be inserted.

(2) Every summons, whether to a party or his agent, or a witness, may be lawfully and competently served at any place within the Islands by any person whatsoever; and every warrant, precept or writ of execution, granted under the authority of this Law, may be lawfully and competently executed by an officer of the court, or by a constable acting under the authority of any Law, though addressed to an officer of the court issuing the same.

(3) Service of any summons, or other process of the court which is required to be served, shall be proved by affidavit purporting to be sworn before the Clerk of the Court, or before a Justice of the Peace; and such affidavit shall state the mode in which such service was effected:

Provided that in all cases where service has been effected by the Bailiff, it shall be sufficient for such Bailiff to return a certificate of service signed by him, and such certificate shall be sufficient *prima facie* evidence of service; or the Bailiff may appear and give evidence on oath of such service having been made.

(4) Every person upon whom any summons to testify has been served, either personally or in such other manner as shall be directed by the rules and to whom at the same time payment, or a tender of payment, of his expenses has been made on the authorised scale of allowance, and who refuses or neglects, without sufficient cause, to appear, or to produce any books, papers or writings, required by such summons to be produced, and also every person present in court who is required to give evidence and who refuses to be sworn or to give evidence, shall forfeit and pay such fine, not exceeding \$100 as the court shall impose on him; and the whole or any part of such fine, in the discretion of the court after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof, if any, shall be paid into the Treasury.

Course if plaintiff fails to appear or prove his case at the trial of an action.

58. If upon the day upon which any action is set down for hearing before any court, or upon any day thereafter to which the proceedings may be adjourned, the plaintiff does not appear, the cause shall be put down to the bottom of the list of causes for trial at such court; and if upon its being again reached the plaintiff does not appear the cause shall be struck out; and if he appears and does not make proof of his demand to the satisfaction of such court, it shall be lawful for the court to non-suit the plaintiff or to give judgment for the defendant and, in either case, where the defendant appears and does not meet the demand, to award to the defendant by way of costs and satisfaction for his trouble and attendance, such sum as the court in its discretion thinks fit; and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same can be recovered:

Provided that if the plaintiff does not appear when called upon, and the defendant appears and admits the cause of the action to the full amount claimed, and pays the fees payable in the first instance by the plaintiff, the court, if it thinks fit, may proceed to give judgment as if the plaintiff had appeared; or if the defendant does not pay the fees as aforesaid, but admits the cause of action to the full amount claimed or any part thereof, the Clerk of the Court shall make a note of such admission on the back of the summons, and at any time within twelve months thereafter, on the application of the plaintiff to the Clerk of the Court, and on payment by the plaintiff of the necessary fees, the Clerk of the Court shall enter judgment for the plaintiff for the amount admitted

and costs, and the judgment so entered shall have the same force and effect as a judgment of the court.

Course if defendant does not appear.

59. If upon any such day, the defendant does not appear or excuse his absence, or neglects to answer when called in court, the court, upon proof to its satisfaction of service of due notice of the day so appointed, in accordance with any rules or in the case of an adjournment, the court being satisfied that the defendant was present when the adjournment was ordered or was given due notice thereof, may proceed to the hearing of the trial of the case on the part of the plaintiff only; and the judgment thereupon shall be as valid as if both parties had attended:

Provided that the court in any such case, at the same or any subsequent hearing, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms as to costs or otherwise as it may think fit, on sufficient cause being shown to the court for that purpose.

Limitation

60. No execution proceedings shall be taken in respect of the judgment of any court in the exercise of its civil jurisdiction after the elapse of twelve years from the time of the delivery of such judgment, or where such judgment is in favour of a person under disability, after the elapse of six years from the cesser of such disability, whichever period is the longer.

Repeal of Cap. 74. Cap. 34 and Cap. 72.

61. The Judicature (Administration of Justice) Law, the Debtors Law and the Judgment Lien Law, are hereby repealed.

THE SCHEDULE

(Section 30 (1))

The following are the fees payable to the Clerk of the Court, the advocate or the Bailiff as the case may be —

“A”

PART I

General Court Fees \$

1. On lodging a statement of claim in the Summary Court (in whatever form) 2
2. Every original civil subpoena to contain the names of not more than four persons 2
3. In the Grand Court —
 - (i) On filing a plaint or counterclaim for the recovery of a sum of money under the Common Law jurisdiction where the amount claimed does not exceed \$800 10

Where the amount claimed exceeds \$800 — for every \$100 or part thereof in excess of \$800 1

Maximum. 50
 - (ii) On filing a plaint, petition, counterclaim or other proceeding under the equity jurisdiction the fees shall be calculated as follows:

Fee No. 3 (i) shall apply to —

- (a) suits by creditors, legatees, devisees, heirs at law or next-of-kin — on the value of the estate;
- (b) suits for execution of trusts — on the value of the trust estate or fund;
- (c) suits for foreclosure or redemption or for enforcing by sale or otherwise any mortgage, charge or lien — on the amount of the mortgage, charge or lien;
- (d) suits for specific performance, or for reforming, delivery up or cancelling of any agreement for the sale, purchase or lease of any property — on the value of the property;
- (e) proceedings under any Laws for the time being in force, relating to trustees or the administration of trusts — on the value of the trust estate or fund;
- (f) suits for the dissolution or winding up of any partnership or for settlement of partnership of the partnership; accounts — on the value of the property, stock or credit or for the partnership;
- (g) suits for partition — on the value of the property for which the suit relates;
- (h) suits for the rectification or cancellation of deeds or instruments — on the value of the property affected by the deed or instruments.

§

- (iii) On filing a plaint, petition, counterclaim or other proceeding for an injunction whether interim or final. 10
- 4. On filing a plaint or a counterclaim under the land jurisdiction of the Grand Court (other than a claim or counterclaim for rent or mesne profits) 10
 - 5. On filing every other plaint or counterclaim (in any court) 10
 - 6. On filing an undertaking by a next friend. 2
 - 7. On filing further and/or better particulars. 2
 - 8. (i) On filing a notice of set-off — on the amount sought to be set-off Fee No. 3 (i)
 - (ii) On filing every other notice not herein provided for other than a notice requiring further and/or better particulars. 5
 - 9. On filing any affidavit other than an affidavit filed under the Probate and Administration jurisdiction of the Grand Court. 1
 - 10. On filing an application for trial by jury. 10
 - 11. On an application for the issue of a writ of *habeas corpus* (not being in relation to any criminal proceedings) . . . There shall be payable also such recoverable expenses of transportation and maintenance as the Court shall allow. 2

	\$
7. To the Clerk of the Court for copies of evidence or documents, for every sheet of 160 words or fraction of a sheet.	1

“B”

Advocates Fees and Costs

Instructions to sue or defend in the Summary Court.	20
Instructions to sue or defend in the Grand Court.	100
For attendance taking judgment where not contested.	15
For attendance in court when the case is called and adjourned.	10
For an attorney-at-law in cases in the Summary Court, per day or part thereof.	60
For attorney-at-law being a junior, in cases in the Grand Court, Brief fee.	150
Refresher per day.	100
For one of Her Majesty’s Counsel in case in the Grand Court, Brief fee.	210
Refresher per day.	140
For attendance in the Grand Court at the hearing of an undefended divorce case.	70
For attendance in chambers, at half the above daily rates	
Every necessary attendance in and about the client’s business in cases in the Summary Court, per hour or part of an hour.	15
Every necessary attendance in and about the client’s business in cases in Grand Court per hour or part of an hour	20
Drawing and preparing any brief, affidavit, summons, petition, account, notice, order or proceeding, not herein otherwise provided, per page.	5
Copies of evidence and documents, per page.	25 cents
Attendance on taxation of costs in the Summary Court.	30

“C”

Bailiff’s Fees

Part I

Taking recognizance or security.	1
Inquiry into sufficiency of security.	1

Affidavit of service of summons, out of jurisdiction.....1

Serving every summons, order of subpoena, within one mile of Court House if the service is not personal. 1

If the Service is personal. 1.50

If above one mile in either case, then extra for every other mile. In the case of two or more defendants residing at the same place mileage for one defendant only. 1

Keeping possession of goods till sale, per day, not exceeding five days. 1

Carrying every prisoner to prison, including all expenses and assistant, per mile. 1

For the delivery of goods replevied. 5

For the appraisalment of goods distrained, one per cent of the value.

For the sale of levies, including advertisements, catalogues and commission, and delivery of goods, five per cent on the net proceeds of sale.

In cases other than levies, where the Bailiff by order of a court acts as auctioneer to conduct any sale or property, real or personal, ordered by the court to be sold, his remuneration shall be according to such special terms as the Judge shall fix, not exceeding the rate of $2\frac{1}{2}$ per cent on the first \$500 gross proceeds, and at the rate of $1\frac{1}{4}$ per cent on any sum in excess of \$500.:

Provided always that in cases where the property to be sold consists wholly or to a great extent of personal effects, or livestock or the like property, the court may reward to the Bailiff further remuneration, not exceeding the rate of 2 per cent:

Provided that such fees shall not include advertisements.

When any mileage money shall be payable on the services or execution of any process, such mileage money shall be charged and reckoned from the Court House of the Islands at which the Bailiff is required to be stationed which is nearest to the residence of the person against whom such process shall have been issued.

A commission of $2\frac{1}{2}$ per cent on receiving money instead of levy shall be paid to the Bailiff.

PART II

Land

For the execution of each warrant of possession under this Law five dollars, with mile money according to the rate in Part I of this Schedule. The other fees shall be the same as under Part I of this Schedule.

(Section 44)

“D”

SUMMONS FOR COMMITMENT

In the Court at
..... versus

Summons No.
Judgment or Order No.

To of Judgment debtor

WHEREAS of Judgment creditor
obtained a judgment against you in the above court on the day of ,19
for payment of

for and for costs upon
which judgment and the subsequent process issued thereon the sum of
is now due:

YOU are therefore hereby summoned to appear personally in the court at
on the day of
..... ,19 at hrs. to be examined by the
court touching your estate and effects and the circumstances under which you
incurred the said judgment debt and as to the means and expectations you then
had, and as to the means and expectations you still have of discharging the said
debt and as to the disposal you have made of your property; AND TAKE
NOTICE that if you disobey this summons the court may commit you to prison.

Given under the hand of the Clerk of Court and sealed with the seal of the Court
at the day of
..... ,19

Clerk of the Court

Passed the Legislative Assembly this 3rd day of September, 1975.

T. RUSSELL
President

SYBIL McLAUGHLIN
Clerk of the Legislative Assembly