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THE JUDICATURE LAW (11 of 1975)
(1995 Revision)

Consolidated with Laws 17 of 1976, 11 of 1980, 10 of 1986, 11 of 1987, 7 of 1990 (part) and 1 of 1995 and with the Judicature Law (Amendment) Order, 1976 (Gazette No. 21 of 11th October, 1976) and the Judicature (Amendment) Law, 1995 (Commencement) Order 1995 (Gazette No. 10 of 16th May, 1995).

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JUDICATURE LAW (1995 Revision)

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JUDICATURE LAW

(1995 Revision)

1. This Law may be cited as the Judicature Law (1995 Revision). Short title
2. In this Law, unless the context otherwise requires- Definitions
 - “advocate” means a legal practitioner authorised to practise as such under the Legal Practitioner’s Law (1995 Revision); 1995 Revision
 - “Bailiff” and “Clerk of the Court” have the meanings ascribed to them by the Grand Court Law (1995 Revision); 1995 Revision
 - “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; Law 9 of 1975
 - “goods” includes chattels and other movable property;
 - “Grand Court” has the meaning ascribed to it in the Grand Court Law (1995 Revision);
 - “rules” means rules of court in force on the 1st October, 1976 and not since revoked or replaced, and rules relevant to this Law made under-
 - Affiliation Law, 1973; Law 10 of 1973
 - Court of Appeal Law; Law 9 of 1975
 - Criminal Procedure Code (1995 Revision); 1995 Revision
 - Evidence Law, 1978; Law 13 of 1978
 - Grand Court Law (1995 Revision);
 - Matrimonial Causes Law; Law 9 of 1976
 - Poor Persons (Legal Aid) Law; Law 17 of 1975
 - Succession Law (1995 Revision); and 1995 Revision
 - Summary Jurisdiction Law (1995 Revision). 1995 Revision
 - “prescribed” means prescribed by this Law or any rule;
 - “Summary Court” has the meaning ascribed to it by the Summary Jurisdiction Law (1995 Revision).

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, 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, commitment 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 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 or 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.

8. Every person whose name appears upon the last register of voters compiled under section 17 of the Elections Law (1995 Revision) 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:

Composition of juries
1995 Revision

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:

And 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.

9. On or before the 1st 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.

The jury list

10. At least six weeks before each session of the court, the Clerk of the Court shall take from the jury list the names of not less than thirty six nor more than seventy-two 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.

Panel of jurors for court sessions

11. The Bailiff shall serve the summonses issued under section 10 at least twenty-one 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 of one hundred dollars.

Summons to jurors for court sessions

Allowance to jurors	12. 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	13. 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 of thirty dollars.
Effect of informalities	14. 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 any action by the court under section 15(2) or 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.
Balloting for jurors	15. (1) The jury to be empanelled for the trial of any case in the court shall be balloted for by the Clerk of the Court, subject to all the rights of challenge: Provided that, where more than one case is heard in the court, whether concurrently or consecutively, as many juries as may necessary may be balloted for from the same jury panel. (2) In the cases of a jury empanelled under subsection (1), the court shall have power at any time after a panel has been summoned to release the panel or any part thereof temporarily and to give directions to it as to the time and place when and where its attendance will be required.
Number of jurors in criminal cases	16. (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) Subject to subsections (4) and (5), on a trial on indictment for any offence, the verdict of the jury need not be unanimous if -

- (a) in a case where there are not less than eleven jurors, ten of them agree on the verdict; and
- (b) in a case where there are not less than six jurors, five of them agree on the verdict.

(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.

17. 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.

Challenges

18. 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.

Foreman of the jury

19. (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.

Jury may be permitted to separate

(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

20. (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;
 - (b) if the number of the jury is reduced by more than one;
 - (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

21. 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 amendment

22. 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

23. 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.

Costs and court fees

24. (1) 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.

(2) 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.

(3) 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.

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

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

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

Satisfaction of judgment debts

- (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 one hundred dollars payable to the judgment debtor at the order of the court.

26. Judgment referred to in section 25 may be assigned in the following form or in a form to the like effect-

Assignment of judgments

“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.

Court funds

27. The First Schedule shall have effect with respect to the management and investment of funds in court, statutory deposits, common investment schemes and accounts relating to such funds and schemes.

Attachment of earnings

28. The Second Schedule shall have effect with respect to the attachment of earnings as a means of enforcing the discharge of monetary obligations.

Charging orders

29. The Third Schedule shall have effect with respect to the imposition of charges to secure payment of money due or to become due under judgments or orders of the court; and the Schedule has effect to make provision for restraining and prohibiting dealings with, and the making of payments in respect of, certain securities.

Imprisonment for non-
payment of judgment
debt

30. (1) Subject to any rules, the Grand Court may commit a person to prison for a term not exceeding six weeks if it is satisfied -

- (a) that he is in default of payment of any sum due under a judgment debt;
- (b) that he has the means to pay the judgment debt, whether in full or by instalments; and
- (c) that he is wilfully refusing or neglecting to satisfy the judgment debt in the manner in respect of which the court is satisfied he has the means.

(2) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that the judgment debt has been satisfied in full or the default in respect of which he was imprisoned has been cured.

(3) An order of committal under this section may be made against a person notwithstanding any previous such order (whether or not discharged) in respect of the same or another judgment debt.

31. (1) Subject to this section, and in addition to any jurisdiction conferred by this or any other law, the Grand Court shall possess (for all purposes relating to the enforcement of judgments, orders, decrees and directions) the like jurisdiction within the Islands which is vested in or capable of being exercised in England by Her Majesty's High Court of Justice and the Divisional Courts of that Court. Powers of enforcement
- (2) Subsection (1) is without prejudice to the generality of section 11 of the Grand Court Law (1995 Revision). 1995 Revision
- (3) A judge of the Grand Court may, for any purpose relating to the enforcement of a judgment, order, decree or direction of the Grand Court, exercise the jurisdiction of the Grand Court relating to that enforcement.
- (4) In this section -
- (a) references in subsection (1) to Her Majesty's High Court of Justice and the Divisional Courts of that Court are to that Court and those Divisions as constituted by the Supreme Court Act 1981 and any enactment amending, modifying or replacing that Act; and U.K. Act
 - (b) references to a judgment, order, decree or direction shall be taken to include references to a judgment, order, decree or direction of any court (including any foreign court) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment, order, decree or direction of the Grand Court.
32. 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. Limitation
33. A judge of the Grand Court may, with reference to any court over which he presides, exercise all the administrative powers conferred upon a magistrate presiding over a summary court by the Summary Jurisdiction Law (1995 Revision). Judge's administrative jurisdiction
1995 Revision
34. (1) Subject to rules of court, in proceedings (whenever instituted) before the Grand Court or the Summary Court for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest at such rate as the court thinks fit, not exceeding the rate prescribed from time to time by rules of court, on all or any part of the debt or damages in respect of which judgment is given or payment is made before judgment, for all or any part of the period between the date when the cause of action arose, and - Power of court to award interest on debt and damages

- (a) in the case of any sum paid before judgment, the date of payment; and
- (b) in the case of the sum for which judgment is given, the date of the judgment.

(2) Subject to rules of court, where -

- (a) there are proceedings (whenever instituted) before the Grand Court or the Summary Court for the recovery of a debt; and
- (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),

the defendant shall be liable to pay the plaintiff simple interest at such rate as the court thinks fit, not exceeding the rate prescribed by rules of court, on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of payment.

(3) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.

(4) Interest under this section may be calculated at different rates in respect of different periods.

(5) In this section “plaintiff” means the person seeking the debt or damages and “defendant” means the person from whom the plaintiff seeks the debt or damages.

(6) Nothing in this section shall affect the right of a plaintiff to enforce a contract which provides for the payment of interest, whether compound or simple, at a rate higher than that which may from time to time be prescribed by rules of court.

Inherent powers of the court

35. (1) The inherent powers of the Grand Court include powers-

- (a) to exclude witnesses (other than parties and expert witnesses) from the trial of any cause in which they have been summoned to testify until such time as they are called to give evidence unless, in a civil cause, all the parties thereto desire their presence and inform the court accordingly; and
- (b) to order and procure the removal from court of any person including counsel or an attorney-at-law who, in the opinion of the court, is guilty of misconduct calculated to prejudice the just and fair trial of any cause or matter and for this purpose “misconduct” includes any improper disclosure, threat or admonition to the court of any witness, juryman or other person present in court and

any address or appeal to the public present in court to the exclusion of the court itself or the jury.

(2) The powers set forth in subsection (1) are hereby conferred upon the Summary Court.

(3) Where a court exercises the powers set forth in paragraph (b) of subsection (1) and gives reasonable time to the client of an attorney-at-law involved to obtain other representation, the exercise of its power by the court shall not be a ground of appeal by or on behalf of such client.

FIRST SCHEDULE

COURT FUNDS

Section 27

Management and investment of funds in court, etc.

1. (1) Subject to rules made under sub-paragraph (6), all money and securities paid and deposited in or under the custody of the Grand Court shall be vested in the Accountant-General of the Grand Court (“the Accountant-General”), who shall be an officer of the court appointed for the purposes of this Schedule by the Governor in Council.

(2) One or more accounts shall be opened and kept in the name of the Accountant-General at such bank or banks as may be designated by the Governor in Council.

(3) Money and securities held by the Accountant-General shall vest in his successor in office without any assignment or transfer.

(4) A sum of money paid and deposited in Court may be invested and re-invested by the Accountant-General in any manner authorised by rules made under sub-paragraph (6).

(5) The Accountant-General may, in such cases as may be prescribed by rules made under sub-paragraph (6), apply to the court for an order for directions as to the manner in which a particular fund in court is to be dealt with.

(6) The Rules Committee of the Grand Court may make rules as to the payment of interest on funds in court and may make rules as to the administration and management of funds in court including the deposit, payment, delivery and transfer in, into and out of court of funds in court and regulating the evidence of such deposit, payment, delivery or transfer.

(7) Rules made under sub-paragraph (6) may -

- (a) provide for the discharge of the functions of the Accountant-General under the rules by a person or persons appointed by him;
- (b) prescribe cases in which interest is to be paid on funds in court;
- (c) prescribe cases in which funds in court are to be invested; and

- (d) prescribe cases in which moneys payable under a judgment or order shall be paid into court.
- (8) Any such rules may make different provision for different cases.

Statutory deposits

2. Where money or securities are deposited with the Accountant-General under any enactment, they shall be treated as if they were funds in court except in so far as -

- (a) the enactment; or
- (b) rules made under paragraph 1(6),

provide to the contrary.

Investment of funds in court

3. (1) The Accountant-General, with the approval of the Governor in Council, shall designate a mutual fund ("designated mutual fund") for the purpose of investing funds in court.

(2) A designated mutual fund shall be one or more of the mutual funds operated by a bank or banks designated under paragraph 1.

(3) Shares in a designated mutual fund shall be allotted to and held by the Accountant-General and any other person authorised by him with the approval of the Governor in Council.

(4) There shall be charged in respect of funds in court invested in a designated mutual fund such fees, whether by way of percentage or otherwise, as the Accountant-General with the approval of the Governor in Council shall determine and such fees shall be collected and accounted for by such persons, and in such manner (and shall be paid to such account) as the Accountant-General shall direct.

Accounts

4. (1) Accounts shall be prepared and shall, at such times as the Accountant-General may direct, be sent to the Auditor-General in respect of transactions under paragraph 1.

(2) The accounts shall be in such form and shall be prepared in respect of such periods as the Accountant-General may direct.

(3) The Auditor-General shall examine, certify and report on accounts sent to him under sub-paragraph (1) and shall lay copies of them and his report on them before the Legislative Assembly.

SECOND SCHEDULE

ATTACHMENT OF EARNINGS ORDERS

Section 28

Power of the Grand Court to attach earnings, etc.

1. (1) The Grand Court and any Summary Court may make an attachment of earnings order to secure the payment -

- (a) of any judgment debt in excess of five hundred dollars; or
- (b) the payment of any sum required to be paid by any order of the court made under section 19 or 21 of the Matrimonial Causes Law, section 6 of the Maintenance Law (Revised), the Affiliation Law, 1973, and any order registered under the Maintenance Orders (Enforcement) Law (Revised).

(2) The power conferred by this Schedule to make an attachment of earnings order includes a power to make such an order to secure the discharge of liabilities arising before the coming into force of this Schedule.

(3) In this Schedule -

“judgment debt” means a sum payable under a judgment or order enforceable by the Grand Court or a Summary Court; or an order of the court which is enforceable as if it were for the payment of money so recoverable;

“the relevant order”, in relation to any payment secured or to be secured by an attachment of earnings order, means the judgment, order or other adjudication from which there arises the liability to make the payments; and

“the debtor”, in relation to an attachment of earnings order, or to proceedings in which the Grand Court has power to make an attachment of earnings order, or to proceedings arising out of such an order, means the person by whom payment is required by the relevant order to be made.

Application for order and conditions of court's power to make it

2. (1) The following persons may apply for an attachment of earnings order -
 - (a) the person to whom payment under the relevant order is required to be made (whether directly or through any officer of the court); or
 - (b) the debtor.
- (2) For an attachment of earnings order to be made on the application of any person other than the debtor it must appear to the court that the debtor has failed to make one or more payments required by the relevant order.

Effect and contents of attachment of earnings order

3. (1) An attachment of earnings order shall be an order directed to a person who appears to the court to have the debtor in his employment and shall operate as an instruction to that person -
 - (a) to make periodical deductions from the debtor's earnings in accordance with paragraph 4; and
 - (b) at such times as the order may require, or as the court may allow, to pay the amounts deducted to the collecting officer of the court, as specified in the order.
- (2) For the purposes of this Schedule, the relationship of employer and employee shall be treated as subsisting between two persons if one of them, as a principal and not as a servant or agent, pays to the other any sums defined as earnings by paragraph 14(1).
- (3) An attachment of earnings order shall contain prescribed particulars enabling the debtor to be identified by the employer.
- (4) The order shall specify the whole amount payable under the relevant order (or so much of that amount as remains unpaid), including any relevant costs.
- (5) The order shall specify -

- (a) the normal deduction rate, that is to say the rate (expressed as a sum of money per week, month or other period) at which the court thinks it reasonable for the debtor's earnings to be applied to meeting his liability under the relevant order; and
 - (b) the protected earnings rate, that is to say the rate (so expressed) below which, having regard to the debtor's resources and needs, the court thinks it reasonable that the earnings actually paid to him should not be reduced.
- (6) For the purposes of an attachment of earnings order, the collecting officer of the court shall be the Clerk of the Court or such other officer as the Chief Justice may appoint.

Scheme of deductions by employer

4. (1) On any pay-day -
- (a) "attachable earnings", in relation to a pay-day, are the earnings payable to the debtor;
 - (b) "the normal deduction" is arrived at by applying the normal deduction rate (as specified in the relevant attachment of earnings order) with respect to the relevant period; and
 - (c) "the protected earnings" are arrived at by applying the protected earnings rate (as so specified) with respect to the relevant period.
- (2) For the purposes of this paragraph -
- (a) "pay-day", in relation to earnings paid to a debtor, means an occasion on which they are paid; and
 - (b) the relevant period in relation to any pay-day is the period beginning -
 - (i) if it is the first pay-day of the debtor's employment with the employer, with the first day of the employment;
 - (ii) if on the last pay-day earnings were paid in respect of a period falling wholly or partly after that pay-day, with the first day after the end of that period; or
 - (iii) in any other case, with the pay-day.
- (3) Where an attachment of earnings order is in force the employer shall on any pay-day -
- (a) if the attachable earnings exceed the protected earnings, deduct from the attachable earnings the amount of the excess or the normal deduction, whichever is the less; or

- (b) make no deduction if the attachable earnings are equal to, or less than, the protected earnings.
- (4) Where the employer is required to comply with two or more attachment of earnings orders in respect of the same debtor, then on any pay-day the employer shall, for the purpose of complying with this paragraph -
 - (a) deal with the orders according to the respective dates on which they were made, disregarding any later order until an earlier one has been dealt with; and
 - (b) deal with any later order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with any earlier order.

Compliance with order by employer

5. (1) Where an attachment of earnings order has been made, the employer shall, if he has been served with the order, comply with it; but he shall be under no liability for non-compliance before seven days have elapsed since the service of the order.
- (2) Where a person is served with an attachment of earnings order directed to him and he has not the debtor in his employment, or the debtor subsequently ceases to be in his employment, he shall (in either case), within ten days from the date of service or, as the case may be, the cesser of that employment, give notice of that fact to the court.
- (3) On any occasion when the employer makes, in compliance with the order, a deduction from the debtor's earnings -
 - (a) he shall be entitled to deduct, in addition, such sum as may be prescribed by rules made by the Rules Committee of the Grand Court towards his clerical and administrative costs; and
 - (b) he shall give to the debtor a statement in writing of the total amount of the deduction.
- (4) Rules of the Rules Committee of the Grand Court under sub-paragraph (3)(a) may prescribe different sums in relation to different cases or classes of case.

Interrelation with alternative remedies open to creditors

6. (1) Where an attachment of earnings order has been made to secure the payment of a judgment debt-

- (a) no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the debt begun before the making of the attachment of earnings order; and
- (b) so long as the order is in force, no execution for the recovery of the debt shall issue against any property without leave of the court.

(2) An attachment of earnings order made to secure the payment of a judgment debt shall cease to have effect on the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the debt.

Variation, lapse and discharge of orders

7. (1) The court may make an order discharging or varying an attachment of earnings order.

(2) Where an order is varied, the employer shall, if he has been served with notice of the variation, comply with the order as varied; but he shall be under no liability for non-compliance before seven days have elapsed since the service of the notice.

(3) The Rules Committee of the Grand Court may make rules to provide for the circumstances in which an attachment of earnings order may be varied or discharged by the court of its own motion.

(4) Where an attachment of earnings order has been made and the person to whom it is directed ceases to have the debtor in his employment, the order shall lapse (except as respects deductions from earnings paid after the cesser of employment and payment to the collecting officer of amounts deducted at any time) and be of no effect unless and until the court again directs it to a person (whether the same as before or another) who appears to the court to have the debtor in his employment.

(5) The lapse of an order under sub-paragraph (4) shall not prevent its being treated as remaining in force for other purposes.

Termination of employer's liability to make deductions

8. (1) Where an attachment of earnings order ceases to have effect under paragraph 6, the collecting officer shall give notice of the cesser of the order to the person to whom the order was directed.

(2) Where the whole amount payable under the relevant order has been made, and also any relevant costs, the court shall give notice to the employer that no further compliance with the order is required.

(3) Where an attachment of earnings order -

- (a) ceases to have effect under paragraph 6; or
- (b) is discharged under paragraph 7, the person to whom the order has been directed shall be under no liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date on which the notice required by sub-paragraph (1) or, as the case may be, a copy of the discharging order is served on him.

Application of sums received by collecting officer

9. The collecting officer to whom a person makes payments in compliance with an attachment of earnings order shall deal with the sums paid as he would if they had been paid by the debtor to satisfy the relevant order.

Power of court to obtain statement of earnings, etc.

10. (1) Where in any proceedings a court has power to make an attachment of earnings order, it may -

- (a) order the debtor to give to the court, within a specified period, a statement signed by him of -
 - (i) the name and address of any person by whom earnings are paid to him;
 - (ii) specified particulars as to his earnings and anticipated earnings, and as to his resources and needs; and
 - (iii) specified particulars for the purpose of enabling the debtor to be identified by any employer of his; and
- (b) order any person appearing to the court to have the debtor in his employment to give to the court, within a specified period, a statement signed by him or on his behalf of specified particulars of the debtor's earnings and anticipated earnings.

(2) Where an attachment of earnings order has been made, the court may at any time thereafter while the order is in force -

- (a) make such an order as is described in sub-paragraph (1); and

- (b) order the debtor to attend before it on a day and at a time specified in the order to give the information described in paragraph (a) of sub-paragraph (1).

(3) Without prejudice to sub-paragraphs (1) and (2), rules of court may provide that where notice of an application for an attachment of earnings order is served on the debtor, it shall include a requirement that he shall give to the court, within such period and in such manner as may be prescribed, a statement in writing of the matters specified in sub-paragraph (1)(a) and of any other prescribed matters which are, or may be, relevant under paragraph 3 to the determination of the normal deduction rate and the protected earnings rate to be specified in any order made on the application.

(4) In any proceedings in which a court has power to make an attachment of earnings order, and in any proceedings for the making, variation or discharge of such an order, a document purporting to be a statement given to the court in compliance with an order under sub-paragraph (1), or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in sub-paragraph (3), shall, in the absence of proof to the contrary, be deemed to be a statement so given and shall be evidence of the facts stated therein.

Obligation of debtor and his employers to notify changes of employment and earnings

11. (1) While an attachment of earnings order is in force the debtor shall, within seven days of every occasion on which he leaves any employment or becomes employed or re-employed -

- (a) notify the court in writing of that fact; and
- (b) give to the court particulars in writing of his earnings and anticipated earnings from the relevant employment.

(2) While an attachment of earnings order is in force any person who becomes the debtor's employer and knows that the order is in force shall, within seven days of his becoming the debtor's employer or of acquiring that knowledge (whichever is the later), notify the court in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and anticipated earnings.

Power of court to determine whether particular payments are earnings

12. (1) Where an attachment of earnings order is in force, the court shall, on the application of a person specified in sub-paragraph (2), determine whether

payments to the debtor of a particular class or description specified by the application are earnings for the purposes of the order; and the employer shall be entitled to give effect to any determination for the time being in force under this paragraph.

(2) The persons referred to in sub-paragraph (1) are -

- (a) the employer;
- (b) the debtor; and
- (c) the person to whom payment under the relevant order is required to be made.

(3) Where an application under this paragraph is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application, or any appeal in consequence of the application, is pending; but this sub-paragraph shall not, unless the court otherwise orders, apply as respects such payments if the employer subsequently withdraws the application or, as the case may be, abandons the appeal.

Persons employed in the service of the Islands

13. (1) The fact that an attachment earnings order is made at the suit of the Attorney-General shall not prevent its operation at any time when the debtor is in the service of the Islands.

(2) Where a debtor is in the service of the Islands and an attachment of earnings order is made in respect of him, then for the purposes of this Law -

- (a) the chief officer for the time being of the department, office or other body in which the debtor is employed shall be treated as having the debtor in his employment (any transfer of the debtor from one department, office or body to another being treated as a change of employment); and
- (b) any earnings paid by the Accountant-General, or otherwise out of the public revenues of the Islands, shall be treated as paid by that chief officer.

Enforcement provisions

14. (1) Subject to this paragraph, a person commits an offence if -

- (a) being required by paragraph 5(1) or 7(2) to comply with an attachment of earnings order, he fails to do so;
- (b) being required by paragraph 5(2) to give a notice for the purposes of that sub-paragraph, he fails to give it, or fails to give it within the time required by that sub-paragraph;
- (c) he fails to comply with an order under paragraph 10(1) or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in paragraph 10(3), or fails (in either case) to comply within the time required by the order or notice;
- (d) he fails to comply with paragraph 11;
- (e) he gives a notice for the purposes of paragraph 5(2), or a notification for the purposes of paragraph 11, which he knows to be false in a material particular, or recklessly gives such a notice or notification which is false in a material particular; or
- (f) in purported compliance with paragraph 5(2) or 11, or with an order under paragraph 10(1), or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in paragraph 10(3), he makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular.

(2) Any person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine of two thousand dollars; or he may be ordered by a judge of the Grand Court to pay a fine of one thousand dollars or, in the case of an offence specified in sub-paragraph (3), to imprisonment for fourteen days.

(3) The offences referred to in the case of which a judge may impose imprisonment are -

- (a) an offence under sub-paragraph (1)(c) or (d), if committed by the debtor; and
- (b) an offence under sub-paragraph (1)(e) or (f), whether committed by the debtor or any other person.

(4) It shall be a defence -

- (a) for a person charged with an offence under sub-paragraph (1)(a) to prove that he took all reasonable steps to comply with the attachment of earnings order in question;
- (b) for a person charged with an offence under sub-paragraph (1)(b) to prove that he did not know, and could not reasonably be expected to know, that the debtor was not in his employment, or (as the case may be) had ceased to be so, and that he gave the

required notice as soon as reasonably practicable after the fact came to his knowledge.

(5) Where a person is convicted or dealt with for an offence under sub-paragraph (2)(a), the court may order him to pay, to the collecting officer, any sums deducted by that person from the debtor's earnings and not already paid to the collecting officer.

(6) Where under this paragraph a person is ordered by a judge of the Grand Court to be imprisoned, the judge may at any time revoke the order and, if the person is already in custody, order his discharge.

(7) Any fine imposed by a judge of the Grand Court under sub-paragraph (2) and any sums ordered by the court to be paid under sub-paragraph (5) shall be recoverable in the same way as a fine imposed by the Grand Court in the exercise of its jurisdiction to punish for contempt of court.

General interpretation

15. (1) In this Schedule, except where the context otherwise requires-

“debtor” and “relevant order” have the meanings given by paragraph 1(3);

“earnings” mean any sums payable to a person -

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service); and
- (b) by way of pension, including any payment in respect of past services;

“the employer”, in relation to an attachment of earnings order, means the person who is required by the order to make deductions from earnings paid by him to the debtor;

“judgment debt” has the meaning given by paragraph 1(3); and

“prescribed” means prescribed by rules of court.

(2) Any reference in this Schedule to sums payable under a judgment or order, or to the payment of such sums, includes a reference to costs and the payment of them; and the references in paragraphs 3(4) and 8(2) to relevant costs

are to any costs of the proceedings in which the attachment of earnings order in question was made, being costs which the debtor is liable to pay.

(3) References in paragraphs 3(5)(b) and 10(1)(a) to the debtor's needs include references to the needs of any person for whom he must, or reasonably may, provide.

(4) Any power to make rules which is conferred by this Schedule is without prejudice to any other power to make rules of court.

THIRD SCHEDULE

CHARGING ORDERS

Section 29

1. (1) Where, under a judgment or order of the Grand Court, a person (the "debtor") is required to pay a sum of money to another person (the "creditor") then, for the purpose of enforcing that judgment or order, the Court may make an order (a "charging order") in accordance with this Schedule imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order.

(2) In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to -

- (a) the personal circumstances of the debtor; and
- (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order.

Property which may be charged

2. (1) Subject to sub-paragraph (3), a charge may be imposed by a charging order only on -

- (a) any interest held by the debtor beneficially in any asset of a kind mentioned in sub-paragraph (2), or any interest held by him beneficially under any trust; or
- (b) any interest held by a person as trustee of a trust ("the trust"), if the interest is in an asset of a kind mentioned in sub-paragraph (2), or is an interest under another trust, and -

- (i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust;
 - (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit; or
 - (iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.
- (2) The assets referred to in sub-paragraph (1) are -
- (a) land;
 - (b) securities of any of the following kinds -
 - (i) any description of security issued by or on behalf of the Government of the Islands;
 - (ii) stock of any body incorporated within the Islands; and
 - (iii) shares in any mutual fund; or
 - (c) funds in court.

(3) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in sub-paragraph (2)(b) or (c), the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

Provisions supplementing paragraphs 1 and 2

3. (1) A charging order may be made absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters.

(2) A charge imposed by a charging order made in relation to any interest in land shall be in the prescribed form and shall be registered in the encumbrances section of the relevant land register.

(3) A judgment creditor may enforce a charge imposed by a charging order made in respect of any interest in land by selling that interest; and sections 75 and 76 of the Registered Land Law (Revised) shall apply in relation to any such sale.

(4) A charging order made in relation to any interest in land shall not be treated as a mortgage or charge of land for the purposes of the Stamp Duty Law, (1995 Revision).

(5) Subject to this Schedule, a charge imposed by a charging order made in relation to any property other than land shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the debtor by writing under his hand.

(6) Where a charging order has been made the court may, at any time, on the application of the debtor or of any person interested in any property to which the order relates, make an order discharging or varying the charging order.

Stop orders and notices

4. (1) In this paragraph -

“stop order” means an order of the court prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in sub-paragraph (4);

“stop-notice” means a notice requiring any person or body on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice, any of those steps without first notifying the person by whom, or on whose behalf, the notice was served; and

“prescribed securities” means securities (including funds in court) of a kind prescribed by rules of court made under this paragraph.

(2) The Rules Committee of the Grand Court may by rules of court make provision -

- (a) for the court to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities; and
- (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.

(3) Rules of court made by virtue of sub-paragraph (2) shall prescribe the person or body on whom a copy of any stop order or a stop notice is to be served.

(4) The steps mentioned in sub-paragraph (1) are -

- (a) the registration of any transfer of the securities;
- (b) in the case of funds in court, the transfer, sale, delivery out, payment or other dealing with the funds, or of the income on the funds;

- (c) the making of any payment by way of dividend, interest, or otherwise in respect of the securities; and
- (d) in the case of a mutual fund, any acquisition of or other dealing with the securities in the fund by any person or body exercising functions in respect of the fund.

(5) Any rules of court made by virtue of this paragraph may include such incidental, supplemental and consequential provisions as the Rules Committee consider necessary or expedient, and may make different provision in relation to different cases or classes of case.

Definitions and Interpretation

5. (1) In this Schedule -

“charging order” means an order made under paragraph 1(1);

“debtor” and “creditor” have the meaning given by paragraph 1(1);

“dividend” includes any distribution in respect of any interest in a mutual fund; and

“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body.

(2) For the purposes of paragraph 1, references to a judgment or order of the Grand Court shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the Grand Court.

(3) References in paragraph 2 to any securities include references to any such securities held as funds in court.

Publication in consolidated and revised form authorised by the Governor in Council this 9th day of May, 1995.

Mona N. Banks-Jackson
Clerk of Executive Council

* Note (not forming part of the Law)-

Paragraph 2 of the Schedule to the Judicature (Amendment) Law, 1995 (Law 1 of 1995), insofar as it repeals section 24 of this Revision, has not yet been the subject of an order bringing it into force.