

REPORT OF THE INSPECTION AND EXAMINATION
OF THE SYSTEM OF JUDICIAL ADMINISTRATION
IN THE KOLHAPUR STATE WITH
SUGGESTIONS FOR ITS IMPROVEMENT

BY

SIR GOVINDRAO MADGAVKAR, I. C. S. (Retd.)

JUDGE,

SUPREME COURT, KOLHAPUR.

Volume II

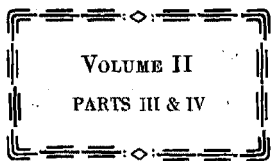
PARTS III & IV

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VOLUME II
PARTS III & IV

Extract from Regency Council Resolution G. R. G. D. No. 60A,
dated 15th September 1942.

"The Regency Council of Kolhapur has, by Resolution No. 60, dated the 15th September 1942 unanimously accepted all the observations and recommendations in this report as they affect what is called the State proper, subject, of course, to such minor modifications of detail as may be found necessary in working out the reforms. So far as the observations and recommendations affect the Jaghirs, the Council will only be able to express its opinion or pass its orders after it has received and considered the views which it is now calling upon the Jaghirdars to furnish."

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Para No.

Subject.

Part III.

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(i) general including accounts, records registers and forms, and

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Part IV.

A general Note for Criminal Courts.

PART III.

NOTE FOR SUBORDINATE COURTS.

The notes of inspection of each Court have already been sent to that Court on the conclusion of the inspection. The remarks which follow are designed to help the Courts to try and do better.

2. The three broad points to which I desire to invite attention are as follows:—

- (1) The work of the Courts is not mere theory and on paper, but is essentially human and practical.
- (2) Business methods and the value of time are as necessary in Courts as in any other work; and Courts must try, in fixing work, to meet, and not to feel themselves superior to, the convenience of the public and should invite their co-operation in return.
- (3) The best results in any Court will be obtained by the combined average standard of soundness and efficiency of the Bar and the Bench working in cordial co-operation. Mutual recrimination is futile, and equally so the attempt to throw the entire responsibility on the so called ignorant and apathetic litigant. The greater the care, skill and fairness of the Pleaders on both sides, the less the need for the interference or even the guidance of the Judge, and the easier his task. Subordinate Judges must avoid either extreme, of leaving matters entirely to the Pleaders without keeping the guidance of the suit in their own hands, or of interfering to excess and trying to discharge the functions of the Pleaders on both sides.

3. All this perhaps will be realised in a particular case. But I desire to point out the responsibility of the Bench and the Bar combined for the file

and the disposal of the work as a whole. The sense of perspective is not always maintained. A small cause suit or a petty contested suit may be fought out at the same length and with the same determination as a special jurisdiction suit. The responsibility usually lies with the Bar, but occasionally with the Judge.

4. The particular points to which I invite attention besides are as follows:—

- (1) Lack of punctuality in sitting and rising.
- (2) Lack of method in arranging the work and the sittings.
 - (a) apart from the division into small cause suits and regular suits, the latter should be divided into more seriously contested or uncontested suits (long causes) and less seriously contested suits (short causes).
 - (b) separate days should be assigned to (1) small cause suits and (2) short causes, and (3) consecutive days for long causes, the Darkhast (execution) work being fixed along with either of the first two categories. The present hotchpot method of all kinds of suits in the daily causelist, beginning with the less contested work renders the hour at which the more contested work is taken up uncertain and trials from day to day impossible.
 - (c) Cause lists of the suits for final hearing should be made up after informal consultation with the pleaders, when issues are being framed, as to the time the final hearing is likely to occupy, and not, as is done at present, according to the vacant space in the memorandum book. With such division of regular suits and of days and with such consultation, an approximate forecast of the time the final hearing is likely to occupy will be possible, and it will not be necessary to set down more than one extra long cause on the Board to provide for contin-

gencies, so that at the most one set of witnesses might have to wait over-night. If the defendant is present, but has not filed a written statement, it is not necessary to adopt either the extreme course of dismissing the suit for default, or of adjourning it for two or three months according to the blank page in the memorandum book. A short adjournment for two or three days, so that the defendant is compelled to remain and instruct and sign the written statement, should suffice. Similarly if all the witnesses on both sides except one or two, are present it should not be necessary to adjourn the suit and compel all the witnesses to come again. It would be possible to finish with them, and if the evidence of the absent witness is necessary, adjourn the suit for a short date to ensure his attendance and finish the suit.

- (d) subject to any such just exceptions trials must be held from day to day, and no suit on the cause list taken up until the hearing of the previous suit including the arguments has been concluded.
- (3) Neither party should be allowed to try and keep its case up its sleeve. The law, particularly as regards the production of documents at the earliest stage, is clear and should be enforced.
- (4) The pleadings are the foundations of the structure of the case of each party and are therefore all important. Pleaders should not leave them to their Karkuns, but should draft them themselves after full and proper instructions. Pleaders are not only Counsel but also Solicitors, and should advise their clients if the case is weak. The pleadings should be strictly confined to the matters laid down by law. The history of the dispute, the evidence and arguments should find no place in them. I have noticed with regret numerous cases of defective pleadings at the outset, and

applications for amendment of pleadings and issues at a late stage and reopening of the whole case.

- (5) The law does not allow any counter written statement by the plaintiff such as is found in many Courts. Where there is a counter-claim by the defendant, the Plaintiff will have to file his answer to the counter-claim. But except in such a case, and with proper pleadings no counter written statement should be necessary.
- (6) But if because of defective pleadings or otherwise the Court thinks it advisable, it has power to, and should, examine the parties before the issues in order to clear the ground. This examination does not mean that the Judge should assume the functions of the pleaders on both sides.
- (7) In regard to evidence it is too often forgotten that the weight depends on the quality rather than upon the quantity of the evidence and particularly of the kind of oral evidence which is frequently relied upon. The cross-examination, particularly in some courts, is unduly prolix, bearing out the conclusions of the Civil Justice Committee (Chap. IV p. 44) that "cross-examination frequently extends over a period which is more than six times as long as is necessary to produce useful results. The waste of time is most noticeable in cases of larger value especially in which the dispute relates to valuable landed property. It is difficult to exaggerate the unnecessary labour and the delays caused thereby".
- (8) Discovery and inspection are rarely used. Documents are not put in at the earliest stage, but as far as possible at the latest, and a mass of documents is often filed without a proper and intelligible list. The Judge is apparently expected to go through them himself.
- (9) The present piecemeal trials cause pleaders and Judges to forget what has passed at the previous hearing, and make it impossible

to retain the impression of the demeanour of each witness in the box. Cases are seldom properly opened. These piecemeal trials necessitate adjournments for arguments, so that suits are argued by the pleaders who conduct them in much the same manner that the appeal would be argued.

- (10) Taking the Bar and the Bench together there is no sufficient grip over the file and over the work as a whole, though pains are taken in individual contested cases, particularly those which are likely to go up in appeal. The tendency is rather to let the work drift according to the inclinations of the client, who may be interested in delaying it or of the pleader.
- (11) There is not sufficient and proper supervision over the establishment and its work. Even the responsibility of the Subordinate Judges in regard to the moneys in the hands of the Nazir and their checking is not adequately realised.

ACCOUNTS AND ACCOUNT REGISTERS.

5. In all the Subordinate Courts and the District Courts in the State, and in the Major Feudatory Jaghirs, accounts of Civil and Criminal Courts are maintained in the old method prescribed in Hope's Manual; that is to say, by Kirds (day books) and Khatavanis (ledgers) and treating each head of account as an Amanat or deposit. Thus the separate Account Registers are termed Amanat Registers, such as "साही पोटगी अमानत, दिवाणी अमानत, सादीलवार अमानत" etc. Although the Civil Circulars Manual, Bombay, (1925), has been made applicable to the State, certain Chapters of the book have not been made applicable, such as the Chapter on Accounts.

6. The working of the Courts in the other branches has been adversely affected by maintaining the accounts as at present. Thus in the register of Civil Suits, Register of Execution Proceedings, and the Bailiff's Kamagari Book, which are maintained as prescribed in the High Court Civil Circulars Manual, the necessary entries relating to money transactions are not made in the Registers and proceedings are unnecessarily protracted.

7. As parties have to deposit or pay into court certain moneys to be paid to their adversary under decrees or orders of a court, and although the necessary Amanat Registers are written from year to year, neither the Court nor Government is in a position to know how much is held in trust. Several complaints were received that although the courts had disposed of execution or other proceedings, the deposits of parties were not returned. All amounts standing over as unpaid for a period of two years are treated as 'Khas Jama' and such amounts, though ordered to be returned by the Court, are not repaid without an order for payment from the Prime Minister.

8. In the absence of an internal check in the shape of the necessary cross entries in registers, it becomes difficult for the court to satisfy the Treasury Officer and obtain a re-fund order. In one court a cheque issued by the Court was actually dishonoured by the Sub-Treasury Officer for no valid reason.

9. It is, therefore, necessary to bring into force without delay the system of maintaining civil courts Accounts including the accounts of copying fees etc. prescribed in the Bombay Civil Circulars Manual. The Suits and Darkhast Registers, the Bailliff's Kamgari Book and other analogous Registers should be maintained in the same manner and form under the rules prescribed for them in the Bombay Civil Circulars Manual.

RECORDS.

10. The present system of records is to divide them into A and B lists and to retain them in the original court. In British India, the division has been found unsuitable for Judicial records and the preservation and destruction of records is regulated by the Preservation and Destruction of Records Act (Ind. Act V of 1917) and Rules made by the High Court of Bombay (vide chapter XII, p. 145, High Court Manual, 1940).

11. The record rooms in the subordinate courts are usually small, dark and ill-ventilated. There is, at present, no room in the District Court to house the records of the subordinate courts. When the buildings of the

subordinate courts are improved or reconstructed, provision should be made for suitable record rooms, with proper racks. The District Court should also be provided with a record room large enough to house the old records of the subordinate courts so that the British Indian system under which subordinate courts send their record monthly to the District Court can be brought into force after application of the relevant Act and Rules above.

12. When the High Court has disposed of appeals, whether from the courts of the State or of the Feudatories, the record of the original court should be sent back to that court and not, as at present, retained in the High Court.

REGISTERS.

13. Important columns in important registers, such as suits and darkhast Registers, are not filled in. (Please see p. 19, Jaisingpure Inspection Notes and Darkhast No. 45 of 1921, and page 13-A of the Inspection Notes, Kagal Sr.). Even the substance of the decree is not filled up in the column provided. Similarly in regard to the money paid in satisfaction of a decree.

14. The decree with the bill of costs is not copied in the suits register. The columns in the Darkhast Register are also not properly filled in. Instead of examining Darkhast applications by the Registers of suits and Darkhasts before execution is ordered to proceed, it is sought to provide an illusory protection to judgment-debtors by refusing more than one copy of the decree to the decree-holder unless and until he proves to the satisfaction of the Court that such copy has been lost or destroyed. No such limitation of copies is in force in British India. The reason is obvious. Where the essential columns in the suit and Darkhast Registers are filled in, even the most ignorant and illiterate of judgment-debtors is protected against wrong process or payments by the Courts' reference to these registers. The correct safe-guard is, therefore, the proper completion of these registers and not the limitation of one copy to the decree-holder, which is usually returned to him after that particular application for execution has been disposed of.

FORMS.

15. Some of the forms prescribed by the Code of Civil Procedure and by the High Court Manual are not printed. On the other hand, several old forms now out of date, such as the form under section 235 of the Old Code of Civil Procedure, are still in use in the subordinate courts.

16. A detailed list of 75 common defects noticed on inspection, together with instances of the judicial proceedings in which such defects occur is attached. The list should be carefully studied by the courts and the defects should be removed.

Sd. G. D. Madgavkar.

PART III.

THE NUMBERS IN COLUMNS 5 & 6 OF THE LIST OF
THE DEFECTS NOTICED REFER TO
THE FOLLOWING COURTS.

State courts.

- (1) High Court, Appellate Side.
- (2) High Court, Original Side.
- (3) District and Sessions Judge.
- (4) Assistant Judge, First Class Sub-Judge and Small cause Judge.
- (5) District Magistrate.
- (6) Sub-Divisional Magistrates, N. D. and S. D.
- (7) First Class City Magistrate, Karveer.
- (8) First Class Magistrate, Peta Karveer.
- (9) Special First Class Magistrate, City and Peta Karveer.
- (10) Special Second Class Magistrate, Karveer (Record Keeper).
- (11) Second Class Sub-Judge, Karveer.
- (12) Second Class Sub-Judge and First Class Magistrate, Gadhinglaj.
- (13) Second Class Sub-Judge, and First Class Magistrate, Radhanagari.
- (14) Second Class Sub-Judge and First and Second Class Magistrate, Panhala.
- (15) Second Class Sub-Judge and First Class Magistrate, Jaisingpore.
- (16) Second Class Sub-Judge and First Class Magistrate, Hatkanangle.
- (17) Budhargad Court, Second & Third Class Magistrates.

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|-----------------------|-----------------------------|
| (18) Raibag Court. | } Second Class Magistrates. |
| (19) Katkol Court. | |
| (20) Shahuwadi Court. | |

Inamdar Courts.

- (21) Gaikwad.
- (22) Khanvatkar (Chavrekar).
- (23) Kshatra Jagatguru.
- (24) Shri Shankaracharya.
- (25) Patankar.
- (26) Chinchli.
- (26-A) Ghosarwad.

Feudatory Courts.

- (27) Vishalgad.
 - (28) Gaganbayda.
 - (29) Kagal Senior.
 - (30) Ichalkaranji.
 - (30-A) Ajra.
 - (31) Kapshi.
 - (32) Torgal.
 - (33) Kagal Junior.
 - (34) Himmat Bahadu
 - (35) Sarlashkar.
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**Statement showing the defects noticed and the
provisions of law disregarded in the Courts
of the Kolhapur State.**

**Statement showing the defects noticed and the provisions of law disregarded
in the Courts of the Kolhapur State.**

Serial No.	Defects noticed.	Provisions of law or rules disregarded.		No. of case or Darkhast.		Remarks.
		Code of Civil Procedure.	High Court Manual.	State Courts.	Peudatory & Inamdar Courts.	
1	2	3	4	5	6	7
	Presentation, examination and admission of plaints.					
1	Plaints are not properly examined and are not rejected immediately if they do not disclose a cause of action.	O. VII, R. 11 (a)	Para. 2. p. 1.	* 15 p. 34	(22) p. 1.	* For the names of the Courts the No. of which is stated in the bracket, see the list of courts appended.
2	Plaints are examined too late. They should be examined within eight days and a report, with the monthly return should be submitted to the High Court of cases not so examined.	—	Para. 4 (v) p. 212, Chapter XXI.	S. No. 121/38. (14) p. 3.	S. No. 2/36/41: (23) p. 5.	
3	Corrections and interlineations are not initialled by the party presenting the same and also by the officer receiving it.	—	Para 3. page. 2	S. No. 4/36 (2) p. 25.	S. No. 138/33 (30) p. 22.	
4	No endorsement is made on the plaint when it is admitted and ordered to be registered. **	—	para. 7, p. 2.	—	S. No. 2/29 (30) p. 16.	** In all the Courts including the District Court.
	Pleadings.					
5	Counter written statements and rejoinders are allowed to be put in though they are not allowed by law.	Explanatory note on p 537. (Mulla 10th Edn).	—	S. No. 757 of 1934 (15) p. 15.	S. No. 260 of 1925 (27) p. 25	

6	Verification below pleading is not in accordance with law.	O. VI, R. 15.	—	S. No. 4/36 (2) p. 25	—	In all Courts.
7	Pleadings are not confined to material facts relied upon but contain evidence and arguments.	O. VI, R. 2.	—	—	—	
Service of summonses.						
8	Orders regarding issue of summonses are not passed by the judge but are sometimes passed by the clerk of the court.	O. V. R. 1 (3)	para. 18 p. 4.	S. No. 4/37 (2) p. 55.	S. No. 317 of 1931 (27) p. 1.	
9	Summons to defendant does not state whether it is for final disposal, or for settlement of issues.	O. V. R. 5	—	S. No. 8/38 (2) p. 43.	—	
10	The Court does not fix the day on which the defendant should appear.	O. V. R. 6.	—	S. No. 82/31 (11) p. 1.	—	
11	If the defendant is not found, the summons is not served on the adult member of his family.	O. V. R. 15	—	S. No. 121/ 38 (14) p. 14.	—	
12	Reports of the bailiffs are incomplete and unsatisfactory, they do not give details such as time of service, etc. as required.	O. V. R. 18.	—	S. No. 121 of 1938 (14) p. 3-A	S. No. 315 of 1936 (30) p. 36.	
13	The process is not affixed to his house if the defendant or any male adult member of his family is not to be found after due and reasonable diligence.	O. V. R. 17	Para. 19 p. 4.	S. No. 121/ of 1938 (14) p. 4.	S. No. 5/38 (30) p. 2-A.	
14	Substituted service is granted without first issuing it in the ordinary way. The applications are not supported by affidavits.	O. V. R. 20.	—	D. No. 240/ of 1940 (12) p. 27-A.	—	

**Statement showing the defects noticed and the provisions of law disregarded
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		Code of Civil Procedure.	High Court Manual.	State Courts.	Fendatory & Inamdar Courts.	
1	2	3	4	5	6	7
15	A summons sent for service to a Court in the jurisdiction of which the person resides is not returned to the Court which issues it along with the record, if any, and in the prescribed form No. 10, Appendix B, Civi. P. Code.	O. V., R. 23.	Para. 23, p. 5.	—	S. No. 53/40 (29) p. 7.	
16	Where a person who has been served to attend to give evidence or to produce a document fails to do so or to produce the document, the necessary steps are not taken under Order XVI, R. 10, Code of Civil Procedure.	O. XVI, R. 10.	—	S. No. 1089 of 1925 (14) p. 11	S. No. 185/31 (27) p. 8.	
17	The bailiffs are not examined by the Court when the process is returned unserved.	O. XXI, R. 25 (2)	Para. 59 p. 79.	D. No. 97/41 (4) p. 55.	S. No. 321 of 1929 (30) p. 29.	
18	The kamgiri book is not filed in according to rules and is not signed either by the nazir or by his clerk when money and process are returned by bailiffs.	—	Page 216 form II.	(12) p. 34.	—	
19	The process is issued too late. It should not be delayed beyond four days.	—	—	Misc. Apln. No. 65/41 (3) p. 106	S. No. 138 of 1933 (30) p. 22.	

Settlement of issues.					
20	The issues are defective and are amended from time to time.	—	—	S. No. 8/38 (2) p. 49.	—
21	Issues are not properly framed and are involved.	—	—	Supreme Ct. Apl. No. 21/41.	—
22	Parties are not examined before the issues are framed.	O. XIV R. 1 (5)	—	S. No. 10/38 (4) p. 22.	S. No. 978/32 (28) p. 1.
23	Framing of issues is much delayed and cases adjourned.	—	—	S. No. 90/39 (15) p. 45.	S. No. 11/32 (28) p. 1.
Trial of suits.					
24	Preliminaries to the trial such as commissions etc. are not attended to.	—	Para. 49 p. 4.	S. No. 4/36 (2) p. 35.	—
25	Admissions and denials with respect to documents produced by parties are not obtained.	O. IX, R. 9	—	—	—
26	List of witnesses is not in proper form.	Appendix H to Civil P. Code.	—	S. No. 4/36 (2) p. 25.	—
27	Evidence is recorded in piecemeal.	—	Para. 4 P. 11	S. No. 94/38 (14) p. 2.	S. No. 978/32 (28) p. 3.
28	Even when arguments are heard, parties are allowed to adduce evidence.	—	—	—	S. No. 56/27 (27) p. 26.
29	Inspection of documents, accounts etc. is allowed after hearing.	—	—	—	S. No. 849/27 (30).

**Statement showing the defects noticed and the provisions of law disregarded
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Serial No.	Defects noticed.	Provisions of law or rules disregarded.		No. of case or Darkhast.		Remarks.
		Code of Civil Procedure.	High Court Manual.	State Courts.	Fendatory & Inamdar Courts.	
1	2	3	4	5	6	7
	Production of documents.					
30	Documents are exhibited in the Roznama before they are proved and admitted.	—	—	S. No. 94/38 (14) p. 1.	S. No. 317/31 (27) p. 2.	
31	When a plaintiff sues upon a document, in his possession, he is allowed to present a plaint even without the document.	O. VII. R. 14	—	S. No. 1089 of 1925 (14) p. 9.	S. No. 106/39	
32	Where the document on which a suit is filed is an entry in a shop-book, or other accounts in the plaintiff's possession, the procedure regarding its return is not followed.	O. VII, R. 17	—	D. No. 205/40 (4) p. 72.	—	
33	(a) Whenever documents are produced at the first hearing, a list of the same is not insisted upon, and (b) Such a list, if produced, is not in proper form.	O. XIII R. 1 (2) Appx. H, Form 5.	Para. 130. page 35.	S. No. 4/37 (2) S. No. 438/23 (1).	S. No. 84/38 (29) p. 3.	
34	Documents are allowed to be put in at any stage (even after arguments are heard) & the court receiving them does not record any reasons for their admission.	O. XIII, R. 2.	—	S. No. 438/23 (1) p. 27.	S. No. 56/27 (27) p. 26.	

35	Proper endorsements, such as the No. of the suit, the name of the person who produced it, the date on which it was produced, are not made on the document produced.	O. XIII, R. 14.	—	S. No. 303 of 1937 (4) p. 1.	S. No. 53/40 (29) p. 8.
36	Extracts from accounts produced are not examined, compared and certified to be true by the court.	O. XIII, R. 5.	—	—	S. No. 56/42 (27) p. 1-A.
37	Documents, improperly stamped, are admitted in evidence. They should only be admitted when proper stamp duty and penalty is paid.	—	—	—	S. No. 84/38 (29) p. 4.
38	Uncertified copies are admitted and exhibited.	Sec. 54, Part I Ind. Evidence Act.	—	—	S. No. 3/39 (4) p. 16.
	Minors and persons of unsound mind.				
39	A separate application for appointment of <i>guardian-ad-litem</i> is not put in.	O. XXXII. R. 3.	—	S. No. 86/34 (11) p. 13.	S. No. 2/29 (30) p. 16.
40	On the application for appointment of <i>guardian-ad-litem</i> , no orders regarding issue of notices are made.	O. XXXII. R. 3.	—	S. No. 12/38 (14) p. 3-A	—
41	Sometimes, a <i>guardian-ad-litem</i> is not appointed in a suit in which the defendant is a minor.	O. XXXII. R. 3 (1)	—	—	S. No. 108/26 (27) page 24.
42	The application for appointment of <i>guardian-ad-litem</i> if made is not served on the minor.	O. XXXII. R. 3 (3)	—	S. No. 82/31 (11) p. 3.	S. No. 317/31 (27) 4. A.
43	Notices of the application for appointment of <i>guardian-ad-litem</i> if made is not served on the minor.	O. XXXII. R. 3.	—	S. No. 12/38 (14) p. 3-A	—

Statement showing the defects noticed and the provisions of law disregarded in the Courts of the Kolhapur State.

Serial No.	Defects noticed.	Provisions of law or rules disregarded.		No. of case or Darkinast.		Remarks.
		Code of Civil Procedure.	High Court Manual.	State Courts.	Fendatory & Inamdar Courts.	
1	2	3	4	5	6	7
44	Consent of the proposed guardian-ad- litem to his appointment as guardian is not taken by the bailiff below the notice.	O. XXXII. R. 4 (3)	—	S. No. 121/38 (14) p. 4.	---	
45	Even when other fit and willing persons are available, an officer of the court is appointed.	O. XXXII R. 4.	—	S. No. 503/37 (4) p. 28.	—	
46	When the minor is alleged to be of un- sound mind, no enquiry is held as to his alleged unsound mind and his con- sequent incapacity to protect his interest to defend a suit.	O. XXXII, R. 15	—	S. No. 438/25 (11) p. 24	—	
	Adjournments.					
47	(A) Short adjournments, insufficient for the purpose, and (B) Long adjournments (even of a year) much more than sufficient for the purpose, are granted, which ultimately delay disposal.		Para. 92 p. 25.	(A) Dar. No. 232/39 (13) p. 22	(B) S. No. 1/37 (30) p. 16.	
48	Each and every application is set down for arguments and is not disposed of immediately even when on the face of it, it can either be admitted or rejected.	—	—	S. No. 11/36 (2) p. 3	—	

49	Too frequent adjournments are granted on insufficient grounds causing waste of time and inconvenience to the parties.	—	—	S. No. 12/24 (more than 150 hearings) (11).	S. No. 219/31 (34) (Over 110 hearings).
Judgments.					
50	No date is fixed for delivering judgments.	O. XX R. 1.	para. 165 p. 46.	S. No. 136/40 (14) p. 15.	S. No. 2 of 1929/1937 (25) p. 13.
51	No separate judgment is written. But orders are passed below the appeal petition or below the plaint.	—	—	A. No. 67/36 (3) p. 3.	—
52	Judgments are sometimes unnecessarily lengthy.	—	—	S. No. 98/39 (12) p. 2-A.	—
53	A judge hears arguments but does not deliver judgment before his transfer and his successor rehears arguments and delivers judgment.	—	Para 165, p. 46.	S. No. 495 of 1914/1928 (11) p. 18.	S. No. 56/27 27) p. 26-A.
54	Findings are not recorded on all issues.	—	—	Apl. No. 4/36 (3) p. 30.	—
55	Neither judgments nor depositions are divided into suitable paragraphs, as they should be.	—	—	—	—
Execution of Darkhasts.					
56	Notices are not issued according to the Civil Procedure Code for instance when they should have been issued under O. XXI, R. 22, they are issued under O. XXI, R. 37.	—	—	—	—
57	Darkhasts are not put up for orders within five days from the date on which they are filed.	—	Para. 6 p. 66.	D. No. 18/40 (4) p. 25.	D. No. 28/32 (28) p. 17

J. R. Dani v. Ram
Bharosa (1932-33)
60 I. A. 53.

**Statement showing the defects noticed and the provisions of law disregarded
in the Courts of the Kolhapur State.**

Serial No.	Defects noticed.	Provisions of law or rules disregarded.		No. of case or Darkhast.		Remarks.
		Code of Civil Procedure.	High Court Manual.	State Courts.	Feudatory & Inamdar Courts.	
1	2	3	4	5	6	7
58	The decree holder's consent is not obtained to the postponement of instalments of amounts decreed.	O. XX, R. 11 (2)	—	D. No. 127 & 162 1941 (12) p. 26.	—	
59	To an application for attachment of moveable property belonging to a judgment-debtor, but not in his possession, an inventory of the property is not attached.	O. XXI, R. 12.	—	D. No. 68/41 (12) p. 31.	—	
60	When a darkhast is presented by the assignee of the judgment-creditor, notice under O. XXI, R. 16 is not issued to both the judgment-debtor and the transferer.	O. XXI, R. 16.	—	D. No. 22/40 (4) p. 26.	—	
61	When an application for execution is made against a legal representative of a party notice to the legal representative is not issued before passing an order of execution against him.	O. XXI, R. 22(b).	—	D. No. 531/33 (11) p. 75	—	
62	While attaching immoveable property the procedure laid down by the Civil Procedure Code is not followed.	O. XXI, R. 54.	—	D. No. 240/40 (12) p. 25.	D. N. 164/32 (28) p. 20.	

63	Order of sale is not passed before issuing an order of proclamation of sale.	O. XXI, R. 64.	—	D. No. 152/24 (14).	D. No. 77/40 (29) p. 15.
64	In the application for preparing a proclamation of sale (1) a full description of the property and (2) of the encumbrance, if any, to which it is liable.	O. XXI R. 66.	—	D. No. 4/34 (2) p. 91.	—
65	Warrant of sale is not issued in the proper form.	O. XXI, R. 66.	—	D. No. 240/40 (12) p. 25.	—
66	The provisions of the law regarding sale of immoveable property are disregarded.	O. XXI, R. 82 onwards.	—	—	(30) p. 2-A.
67	Certificate of sale is not issued in the proper form.	O. XXI, R. 94.	—	D. No. 240/40 (12) p. 25-A.	—
68	The final bid in a sale is not held in the court house under the supervision of the judge as is done in British India.	—	Para 76, p. 85.	D. No. 523/33 (11) p. 73.	—
69	Proclamation of sale is not proclaimed by beat of drum.	—	—	D. No. 434, (2) p. 91.	—
70	The order of the appellate court is not on record.	—	—	D. No. 152/24 (14).	—
Roznamas.					
71	The roznamas do not give a faithful history of the trial, for instance:—	—	Para 114 (i) p. 29.	S. No. 103/36 (13) p. 2.	S. No. 967/32 (28) p. 8.
	(A) the date to which a case is adjourned is not stated.	—	—	—	S. No. 228/35 (29) p. 1A.
	(B) The presence of the pleaders & the witnesses examined are not stated.	—	—	—	—
	(C) The work done on a particular day is not stated.	—	—	—	S. No. 967/32 (28) p. 8.

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	(D) When a case is sent up in appeal, to the higher court or other authority, no entry is made in the roznama of that fact.	—	Para 114 (1) p. 29.	—	S. No. 156/38 (28) p. 11.	
	(E) The name of the presiding judge before whom a case is filed and taken up is not entered in the roznama.	—	para 114 (vi) p. 29.	S. No. 103/36 (13) p. 15.	S. No. 228/35 (29) p. 1.	
72	The roznama does not show whether all the witnesses summoned or tendered were or were not examined and, if they were not examined, the reasons why they were not examined.	—	para 114 (viii) p. 29.	S. No. 121/38 (14) p. 8.	S. No. 185/31 (27) p. 9.	
73	At the end of the roznama, an abstract showing the No. of days each witness was obliged to attend or re-attend the court is not given.	—	para 114 (v) p. 29.	S. No. 103/36 (13) p. 20.	S. No. 967/32 (28)	
	General.					
74	Securities from receivers are not taken.	O. XL, R. 3-(a)	—	Suit No. 2/40 (4) p. 24.	—	
75	There is no proper cause-list or memorandum book but entries are made in a diary which is unintelligible.	—	—	—	—	

PART IV.

NOTE OF INSPECTION FOR CRIMINAL COURTS.

The prevailing system both in the Courts of the State and of Feudatories as well as of the Inamdars is the combination of the civil and criminal powers in the same officer. As in the case of revenue Mamlatdars, with criminal powers, this combination needs a careful division of days or at least of hours for continuous civil work followed by continuous criminal work rather than that both kinds of work should be taken up indiscriminately. Such division is best left to the Presiding Officer according to the average quantity and quality of each kind of work in that particular court, subject to just exception for any unusual case. One of the trifling defects noticed was the absence in most courts of a proper and separate room to keep property (Muddemal), for instance, the court of the Special First Class Magistrate, City and Peta Karveer. But the greatest defects in the working of the criminal courts are the piecemeal trials, the enormous number of adjournments and the years that even the simplest criminal cases take to decide. For instance, in case No. 41 of 1936, under section 147 of the Indian Penal Code, in the court of the First class Magistrate, Peta Karveer, there were more than 44 adjournments, the trial took more than 5 years to decide and, ultimately, the accused was acquitted. Similarly, in case No. 1 of 1940 under section 380 of the Indian Penal Code, in the court of the Second Class Magistrate, Chinchali, the case was adjourned from time to time and took 2 years to decide and the accused was also acquitted. The inconvenience to the unfortunate witnesses never seems to strike the minds of the Magistrates. It often happens that in criminal trials, either the complainant or the accused deliberately try to protract the proceedings. No attempt is made to check delay. Adjournments are granted for the asking, particularly when the accused is on bail but even in cases where he is not. The Police Prosecutor is often not present nor sometimes the investigating Police Officer. And, apparently but wrongly, the convenience of these officers

and of the pleaders comes before the convenience of the parties and the witnesses. A case has been noted where the complainant was absent on 19 hearings but the accused had to be present on each occasion and was ultimately discharged (Case No. 8 of 1940 in the Court of the Kshatra Jagatguru).

2. The preventive sections of the Code of Criminal Procedure, meant to avoid breaches of the peace, are too often used and are prolonged as though they were civil suits between the parties. Receivers are appointed under section 146 of the Criminal Procedure Code without fixing a period for the parties within which the parties must go to the civil court; for instance Misc. Nos. 34 of 1932 and 67 of 1931 in the court of the Magistrate, I Class, Peta Karveer. The result is that the Receiver appointed by the Criminal Courts remains for even 10 or 12 years.

3. Piecemeal trials, without regard to the stages contemplated by law, such as the charge, are the rule and not the exception. The law divides cases into summons cases and warrant cases. A charge can and should be framed as soon as the Magistrate is satisfied that there is a prima facie case and even before the close of the evidence for the Prosecution. If the prosecution have closed their evidence and have not made out a prima facie case, the accused is entitled to a discharge. If, on the other hand, a charge is framed, the accused is entitled to recall the prosecution witnesses for cross-examination and to lead evidence in his own defence. When both sides have closed their case, an acquittal or a sentence is the only alternative. Instead of these four or five stages provided by law for the conduct of criminal cases, the trials proceed without any well-marked division with innumerable adjournments always for some months and not infrequently for years even when the subject-matter is a few rupees worth of *Bajri* or *Jawari*. Several cases have been noted in which the Magistrate has heard arguments but has failed to record a judgment with the result that the trial has to begin de novo. Taken all in all, innocent people, such as witnesses, have reason to dread the criminal courts whether of the State or of the Jahagirdars or of the Inamdars.

4. Appellate Courts should not countenance delays in trials by lightly admitting interlocutory appeals and granting stays. As a rule, these appeals prove in the end infructuous and are only meant to protract the trials.

5. Another feature of the Criminal cases is the large number of accused in many cases, particularly disputes which are rather of a civil nature but are brought in preference to the criminal courts by the complainant to harass his opponent. In such cases, all relatives or inmates of the house of the accused are brought as co-accused. If because of the necessities of cultivation all the accused cannot be present, the case is again adjourned. There are two ways of sifting such complaints. The first is carefully to examine the complainant before process is issued and to insist on his describing the particular criminal act he imputes to each accused. The second is to award compensation to the accused wrongly inculpated. The last, an exceptional recourse, is to sanction the prosecution of the complainant for perjury.

Sd. G. D. Madgavkar.