

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE CODE OF
CIVIL PROCEDURE, 1908
(ACT V OF 1908)

with appendices containing rules made by the
different High Courts and the Chief Court
of Oudh under section 122 of the Code.

AS MODIFIED UP TO 1st OCTOBER, 1939.

PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI.
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI.
1940.

SEP.
SECTER

Price Rs. 1-10 or 2s. 6d.

| | |
|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SECTION 82, HEADING TO SECTIONS 83, 84, 85, 86, 87, 92 AND 93, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 98, AMENDED | Act 18 of 1928, s 2 and Sch I |
| SECTION 103, AMENDED | Act 6 of 1926, s 2 |
| SECTION 104, AMENDED | Act 9 of 1922, s 3 |
| SECTION 111, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 111 A, INSERTED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 116, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 120, AMENDED | Act 3 of 1909, s 127 and Sch III |
| SECTION 122, AMENDED | { Act 18 of 1919, s 2 and Sch Act 11 of 1923, s 3 and Sch II Act 32 of 1925, s 2 and Sch Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 123, AMENDED | { Act 13 of 1926, s 2 and Sch Act 18 of 1919, s 2 and Sch I Act 11 of 1923, s 3 and Sch II Act 32 of 1925, s 2 and Sch Act 34 of 1926, s 2 and Sch Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 125, AMENDED | { Act 38 of 1920, s 2 and Sch I Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 126, SUBSTITUTED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTIONS 127 AND 129, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 130, SUBSTITUTED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTIONS 131 AND 133, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 135 A, INSERTED AMENDED | Act 23 of 1925, s 3 Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTIONS 136 AND 137, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 138, AMENDED | { Act 4 of 1914, s 2 and Sch Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 139, AMENDED | Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 143, AMENDED | { Act 38 of 1920, s 2 and Sch I Government of India (Adaptation of Indian Laws) Order, 1937 |
| SECTION 156, REPEALED | Act 17 of 1914, s 3 and Sch II |
| SCHEDULE I, ORDER III, AMENDED | Act 22 of 1926, s 2 |
| SCHEDULE I, ORDER V, AMENDED | { Act 17 of 1914, s 2 and Sch I Act 10 of 1927, s 2 and Sch I Act 35 of 1934, s 2 and Sch Government of India (Adaptation of Indian Laws) Order, 1937 |

THE CODE OF CIVIL PROCEDURE, 1908 (ACT V OF 1908)

CONTENTS

PRELIMINARY

SECTIONS

- 1 Short title, commencement and extent
- 2 Definitions
- 3 Subordination of Courts
- 4 Savings
- 5 Application of the Code to Revenue Courts
- 6 Pecuniary jurisdiction
- 7 Provincial Small Cause Courts
- 8 Presidency Small Cause Courts

PART I.

SUITS IN GENERAL

JURISDICTION OF THE COURTS AND *res judicata*

- 9 Courts to try all civil suits unless barred
- 10 Stay of suit
- 11 *Res judicata*
- 12 Bar to further suit
- 13 When foreign judgment not conclusive
- 14 Presumption as to foreign judgments

PLACE OF SUING

- 15 Court in which suits to be instituted
- 16 Suits to be instituted where subject-matter situate
- 17 Suits for immovable property situate within jurisdiction of different Courts
- 18 Place of institution of suit where local limits of jurisdiction of Courts are uncertain
- 19 Suits for compensation for wrongs to person or moveables

20 Other

1

SECTIONS

- 20 Other suits to be instituted where defendants reside or cause of action arises
- 21 Objections to jurisdiction
- 22 Power to transfer suits which may be instituted in more than one Court
- 23 To what Court application lies
- 24 General power of transfer and withdrawal
- 25 Power of Provincial Government to transfer suits

INSTITUTION OF SUITS

- 26 Institution of suits

SUMMONS AND DISCOVERY

- 27 Summons to defendants
- 28 Service of summons where defendant resides in another province
- 29 Service of foreign summonses
- 30 Power to order discovery and the like
- 31 Summons to witness
- 32 Penalty for default

JUDGMENT AND DECREE

- 33 Judgment and decree

INTEREST

- 34 Interest

COSTS

- 35 Costs
- 35A Compensatory costs in respect of false or vexatious claims or defences

PART II.

EXECUTION

GENERAL

- 36 Application to orders
- 37 Definition of Court which passed a decree

COURTS

COURTS BY WHICH DECREES MAY BE EXECUTED

SECTIONS

- 38 Court by which decree may be executed
- 39 Transfer of decree
- 40 Transfer of decree to Court in another province
- 41 Result of execution-proceedings to be certified
- 42 Powers of Court in executing transferred decree
- 43 Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory
- 44 Execution of decrees passed by Courts of Indian States
- 44A Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory
- 45 Execution of decrees in foreign territory
- 46 Precepts

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

- 47 Questions to be determined by the Court executing decree.

LIMIT OF TIME FOR EXECUTION

- 48 Execution barred in certain cases

TRANSFEREES AND LEGAL REPRESENTATIVES

- 49 Transferee
- 50 Legal representative

PROCEDURE IN EXECUTION

- 51 Powers of Court to enforce execution
- 52 Enforcement of decree against legal representative
- 53 Liability of ancestral property
- 54 Partition of estate or separation of share

ARREST AND DETENTION

- 55 Arrest and detention
- 56 Prohibition of arrest or detention of women in execution of decree for money
- 57 Subsistence-allowance

58 Detention

8

SECTIONS

- 58 Detention and release
- 59 Release on ground of illness

ATTACHMENT

- 60 Property hable to attachment and sale in execution of decree
- 61 Partial exemption of agricultural produce
- 62 Seizure of property in dwelling-house
- 63 Property attached in execution of decrees of several Courts
- 64 Private alienation of property after attachment to be void

SALE

- 65 Purchaser's title
- 66 Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff
- 67 Power for Provincial Government to make rules as to sales of land in execution of decrees for payment of money

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST
IMMOVEABLE PROPERTY

- 68 Power to prescribe rules for transferring to Collector execution of certain decrees
- 69 Provisions of Third Schedule to apply
- 70 Rules of procedure
Jurisdiction of Civil Courts barred
- 71 Collector deemed to be acting judicially
- 72 Where Court may authorize Collector to stay public sale of land

DISTRIBUTION OF ASSETS

- 73 Proceeds of execution-sale to be rateably distributed among decree-holders

RESISTANCE TO EXECUTION

- 74 Resistance to execution

PART III

PART III. -
INCIDENTAL PROCEEDINGS
COMMISSIONS

SECTIONS

- 75 Power of Court to issue commissions
- 76 Commission to another Court
- 77 Letter of request
- 78 Commissions issued by foreign Courts

PART IV.
SUITS IN PARTICULAR CASES

SUITS BY OR AGAINST THE CROWN OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

- 79 Suits by or against the Crown
- 80 Notice
- 81 Exemption from arrest and personal appearance
- 82 Execution of decree

SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS AND RULERS OF INDIAN STATES

- 83 When aliens may sue
- 84 When foreign States may sue
- 85 Persons specially appointed by Government to prosecute or defend for Princes or Chiefs
- 86 Suits against Princes, Chiefs, ambassadors and envoys
- 87 Style of Princes and Chiefs as parties to suits

INTERPLEADER

- 88 Where interpleader-suit may be instituted

PART V.
SPECIAL PROCEEDINGS

ARBITRATION

- 89 Arbitration

SPECIAL CASE

- 90 Power to state case for opinion of Court

SUITS RELATING TO PUBLIC MATTERS

- 91 Public nuisances
- 92 Public charities
- 93 Exercise of powers of Advocate General outside Presidency-towns

PART VI.

SUPPLEMENTAL PROCEEDINGS

SECTIONS

- 94 Supplemental proceedings
- 95 Compensation for obtaining arrest, attachment or injunction on insufficient grounds

PART VII.

APPEALS

APPEALS FROM ORIGINAL DECREES

- 96 Appeal from original decree
- 97 Appeal from final decree where no appeal from preliminary decree
- 98 Decision where appeal heard by two or more Judges
- 99 No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction

APPEALS FROM APPELLATE DECREES

- 100 Second appeal
- 101 Second appeal on no other grounds
- 102 No second appeal in certain suits
- 103 Power of High Court to determine issues of fact

APPEALS FROM ORDERS

- 104 Orders from which appeal lies
- 105 Other orders
- 106 What Courts to hear appeals

GENERAL PROVISIONS RELATING TO APPEALS

- 107 Powers of Appellate Court
- 108 Procedure in appeals from appellate decrees and orders.

APPEALS TO THE KING IN COUNCIL

- 109 When appeals lie to King in Council
- 110 Value of subject-matter
- 111 Bar of certain appeals
- 111A Appeals to Federal Court
- 112 Savings

PART VIII.

PART VIII.

REFERENCE, REVIEW AND REVISION

SECTIONS

- 113 Reference to High Court
- 114 Review
- 115. Revision

PART IX.

SPECIAL PROVISIONS RELATING TO THE
CHARTERED HIGH COURTS.

- 116 Part to apply only to certain High Courts
- 117 Application of Code to High Courts
- 118 Execution of decree before ascertainment of costs
- 119 Unauthorized persons not to address Court
- 120 Provisions not applicable to High Court in original
civil jurisdiction

PART X.

RULES

- 121. Effect of rules in First Schedule
- 122 Power of certain High Courts to make rules
- 123 Constitution of Rule Committees in certain provinces
- 124 Committee to report to High Court
- 125 Power of other High Courts to make rules
- 126 Rules to be subject to approval
- 127 Publication of rules
- 128 Matters for which rules may provide
- 129 Power of Chartered High Courts to make rules as to
their original civil procedure
- 130 Power of other High Courts to make rules as to matters
other than procedure
- 131 Publication of rules

PART XI.

PART XI.

MISCELLANEOUS

SECTIONS

- 132 Exemption of certain women from personal appearance
- 133 Exemption of other persons
- 134 Arrest other than in execution of decree
- 135 Exemption from arrest under civil process
- 135A Exemption of members of legislative bodies from arrest and detention under civil process
- 136 Procedure where person to be arrested or property to be attached is outside district
- 137 Language of subordinate Courts
- 138 Power of High Court to require evidence to be recorded in English.
- 139 Oath on affidavit by whom to be administered
- 140 Assessors in causes of salvage, etc
- 141 Miscellaneous proceedings
- 142 Orders and notices to be in writing
- 143 Postage
- 144 Application for restitution
- 145 Enforcement of liability of surety
- 146 Proceedings by or against representatives
- 147 Consent or agreement by persons under disability.
- 148 Enlargement of time
- 149 Power to make up deficiency of court-fees
- 150 Transfer of business
- 151 Saving of inherent powers of Court
- 152 Amendment of judgments, decrees or orders
- 153 General power to amend
- 154 Saving of present right of appeal
- 155 Amendment of certain Acts
- 156 *Repealed*
- 157 Continuance of orders under repealed enactments
- 158 Reference to Code of Civil Procedure and other repealed enactments

SCHEDULES.

SCHEDULES.

THE FIRST SCHEDULE —RULES OF PROCEDURE

APPENDIX A —PLEADINGS

APPENDIX B —PROCESS

APPENDIX C —DISCOVERY,

INSPECTION AND ADMISSION

APPENDIX D —DECREES

APPENDIX E —EXECUTION

APPENDIX F —SUPPLEMENTAL PROCEEDINGS

APPENDIX G —APPEAL, REFERENCE AND REVIEW

APPENDIX H —MISCELLANEOUS

THE SECOND SCHEDULE —ARBITRATION

APPENDIX —FORMS

THE THIRD SCHEDULE —EXECUTION OF DECREES BY COLLECTORS

THE FOURTH SCHEDULE —ENACTMENTS AMENDED

THE FIFTH SCHEDULE —*Repealed*

APPENDICES

RULES MADE BY THE CHARTERED HIGH COURTS AND THE CHIEF COURT OF OUDH UNDER SECTION 122 OF THE CODE

APPENDIX I —RULES MADE BY THE CALCUTTA HIGH COURT

APPENDIX II —RULES MADE BY THE MADRAS HIGH COURT

APPENDIX III —RULES MADE BY THE BOMBAY HIGH COURT

APPENDIX IV —RULES MADE BY THE ALLAHABAD HIGH COURT

APPENDIX V —RULES MADE BY THE PATNA HIGH COURT

APPENDIX VI —RULES MADE BY THE LAHORE HIGH COURT

APPENDIX VII —RULES MADE BY THE NAGPUR HIGH COURT

APPENDIX VIII —RULES MADE BY THE CHIEF COURT OF OUDH

ACT No. V OF 1908.¹

[21st March, 1908]

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

(As modified up to 1st October, 1939)

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature, It is hereby enacted as follows —

PRELIMINARY

1. (1) This Act may be cited as the Code of Civil Procedure, 1908 Short title, commencement and extent

(2) It shall come into force on the first day of January, 1909

(3) This section and sections 155 to 158 extend to the whole of British India the rest of the Code extends to the whole of British India, except the Scheduled Districts

2 In

¹ For Statement of Objects and Reasons, *see* Gazette of India, 1907 Pt V, p 179, for Report of Select Committee, *see* *ibid*, 1908, Pt V, p 35 and for Proceedings in Council, *see* *ibid*, 1907, Pt VI, p 135 and *ibid*, 1908, pp 8, 12 and 212

For portion of the Civil Procedure Code extended to the Presidency Small Cause Court, Calcutta, *see* Calcutta Gazette, 1910, Pt I, p 814, Schedule A to Rules of Practice

The Act has been extended by notification under ss 5 and 5A of the Scheduled Districts Act, 1874 (XIV of 1874), to the following Scheduled Districts —

- (1) The Districts of Jalpaiguri, Cachar (excluding the North Cachar Hills), Sylhet, Goalpara (including the Eastern Duars), Kamrup, Darrang, Nowgong (excluding the Mikir Hill Tracts), Sibsagar (excluding the Mikir Hill Tracts) and Lakhimpur (excluding the Dibrugarh Frontier Tracts), Gazette of India, 1909, Pt I p 5 and Gazette of India, 1914, Pt I, p 1690
- (2) The Province of Sind, Bombay Government Gazette, Extraordinary, 1909, Pt I and Gazette of India, 1909, Pt I, p 32
- (3) The Districts of Darjeeling and the Districts of Hazaribagh, Ranchi Palamau and Manbhum in Chota Nagpur, Calcutta Gazette, 1909, Pt I, p 25 and Gazette of India, 1909, Pt I, p. 33

(Preliminary)

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Code" includes rules

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default

Explanation

-
- (4) The Province of Kumaun and Garhwal and the Tarai Parganas with modifications, United Provinces Gazette, 1909, Pt I, p 3 and Gazette of India, 1909, Pt I, p 31
- (5) The Pargana of Janswar Bawar in Dehra-Dun and the Scheduled portion of the Mirzapur District, United Provinces Gazette, 1909, Pt I, p 4 and Gazette of India, 1909, Pt I, p 32
- (6) Coorg, Gazette of India, 1909, Pt I, p 32
- (7) Scheduled Districts in Punjab, Gazette of India, 1909, Pt I, p 33.
- (8) The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan, composing the North West Frontier Province, Gazette of India, 1909, Pt II, p 80
- (9) Sections 36 to 43 to all the Scheduled Districts in Madras, Gazette of India, 1909, Pt I, p 152
- (10) To the Scheduled Districts of the Central Provinces, except so much as is already in force and so much as authorizes the attachment and sale of immoveable property in execution of a decree not being a decree directing the sale of such property, Gazette of India, 1909, Pt I, p 239
- (11) To Ajmer-Merwara, except sections 1 and 155 to 158, Gazette of India, 1909, Pt II, p 480
- (12) To Pargana Dhalbhum, the Municipality of Chaibassa in the Kolhan and the Porahat Estate in the District of Singhbhum, Calcutta Gazette, 1909, Pt I, p 453 and Gazette of India, 1909, Pt I, p 443

Under section 3 (3) (a) of the Sonthal Parganas Settlement Regulation (III of 1872), ss 38 to 42 and 156 and Rules 4 to 9 in Order XXI in the first Schedule have been declared in force in the Sonthal Parganas and the rest of the Code for the trial of suits referred to in section 10 of the Sonthal Parganas Justice Regulation, 1893 (5 of 1893), Calcutta Gazette, 1909, Pt I, p 45, and the whole Code in the Angul District under s 3 of the Angul Laws Regulation, 1936 (5 of 1936)

It has been declared in force in British Baluchistan under s 3 of the Baluchistan Laws Regulation, 1913 (II of 1913), Bal Code

It has been declared in force in Panth Piploda, Reg I of 1929, s 2

It has been declared in force in the district of Khondmals by Reg 4 of 1936, s 3 and Sch

(Preliminary)

Explanation—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made.

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

(5) "foreign Court" means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by ¹[the Central Government or the Crown Representative].

(6) "foreign judgment" means the judgment of a foreign Court.

(7) "Government Pleader" includes any officer appointed by the ²[Provincial Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

(8) "Judge" means the presiding officer of a Civil Court.

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order.

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made.

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

(12) "mesne

¹ These words were substituted for the words "the Governor General in Council" by paragraph 3 and Sch. I of the Government of India (Adaptation of Indian Laws) Order, 1937.

² These words were substituted for the words "Local Government" by para 4, *ibid*.

(Preliminary)

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession

(13) "moveable property" includes growing crops

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court

(16) "prescribed" means prescribed by rules

(17) "public officer" means a person falling under any of the following descriptions, namely —

(a) every Judge,

(b) every member of the Indian Civil Service,

(c) every commissioned or gazetted officer in the military¹[naval or air] forces of His Majesty, 2* * * while serving under³[the Crown],

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties,

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement,

(f) every officer of³[the Crown] whose duty it is as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience,

(g) every

¹ These words were substituted for the words "or naval" by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

² The words "including His Majesty's Indian Marine Service" were omitted, *ibid*

³ These words were substituted for the words "the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Preliminary)

- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of ¹[the Crown], or to make any survey, assessment or contract on behalf of ¹[the Crown], or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of ¹[the Crown] or to make, authenticate or keep any document relating to the pecuniary interests of ¹[the Crown], or to prevent the infraction of any law for the protection of the pecuniary interests of ¹[the Crown] and
- (h) every officer in the service or pay of ¹[the Crown], or remunerated by fees or commission for the performance of any public duty

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds and

(20) "signed" save in the case of a judgment or decree, includes stamped

3 For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court ^{Subordination of Courts.}

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force ^{Savings.}

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land

5. (1) Where

¹ These words were substituted for the words " the Government " by para. 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Preliminary)

Application
of the Code
to Revenue
Courts

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the ¹[Provincial Government] ²* * * may, by notification in the ³[official Gazette] declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the ¹[Provincial Government] ⁴* * * may prescribe

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature

Pecuniary
jurisdiction.

6 Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction

Provincial
Small Cause
Courts

7. The following provisions shall not extend to Courts constituted under the Provincial Small Causes Courts Act 1887, or to Courts exercising the jurisdiction of a Court of **IX** Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

- (i) suits excepted from the cognizance of a Court of Small Causes,
- (ii) the execution of decrees in such suits,
- (iii) the execution of decrees against immoveable property, and

(b) the

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

² The words "with the previous sanction of the Governor General in Council" were omitted by s 2 and Sch I, Pt I of the Devolution Act, 1920 (38 of 1920)

³ These words were substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

⁴ The words "with the sanction aforesaid" were omitted by s 2 and Sch I, Pt I of the Devolution Act, 1920 (38 of 1920)

(Preliminary)

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 ¹[so far as they authorise or relate to—

(i) orders for the attachment of immoveable property,

(ii) injunctions,

(iii) the appointment of a receiver of immoveable property, or

(iv) the interlocutory orders referred to in clause (e) of section 94] and

sections 96 to 112 and 115

XV of 1882

8. Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay

Presidency
Small Cause
Courts

² Provided that—

(1) the High Courts of Judicature at Fort William, Madras and Bombay, as the case may be, may from time to time, by notification in the ³[official Gazette], direct that any such provisions not inconsistent with the express provisions of the Presidency Small Cause Courts, Act, 1882, and with such modifications and adaptations as may be specified in the notification, shall extend to suits or proceedings or any class of suits or proceedings in such Court,

XV of 1882

(2) all rules heretofore made by any of the said High Courts under section 9 of the Presidency Small Cause Courts Act, 1882, shall be deemed to have been validly made]

XV of 1882

PART I

¹ These words were substituted for the words "so far as they relate to injunctions and interlocutory orders" by s 3 of the Small Cause Courts (Attachment of Immoveable Property) Act, 1926 (1 of 1926)

² Provisos (1) and (2) were added by s 2 of the Code of Civil Procedure (Amendment) Act, 1914 (1 of 1914)

³ These words were substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part I—Suits in general Jurisdiction of the Courts and
res judicata) •

PART I.

SUITS IN GENERAL

JURISDICTION OF THE COURTS AND *res judicata*Courts to try
all civil suits
unless barred

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred

Explanation—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies

Stay of suit

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by ¹[the Central Government or the Crown Representative] and having like jurisdiction, or before His Majesty in Council

Explanation—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action

Res judicata.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court

Explanation I—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto

Explanation II.

¹ These words were substituted for the words “the Governor General in Council” by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part I—Suits in general Jurisdiction of the Courts and res judicata)

Explanation II—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court

Explanation III—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other

Explanation IV—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit

Explanation V—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused

Explanation VI—Where persons litigate *bond fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies

Bar to further suit

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the parties or between parties under whom they or any of them claim litigating under the same title except—

When foreign judgment not conclusive

- (a) where it has not been pronounced by a Court of competent jurisdiction,
- (b) where it has not been given on the merits of the case,
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable,
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice,
- (e) where it has been obtained by fraud,
- (f) where it sustains a claim founded on a breach of any law in force in British India

14. The

(Part I—Suits in general Jurisdiction of the Courts and
res judicata Place of Suing)Presumption
as to foreign
judgments

14 The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record, but such presumption may be displaced by proving want of jurisdiction

PLACE OF SUING

Court in
which suits
to be
instituted.

15 Every suit shall be instituted in the Court of the lowest grade competent to try it

Suits to be
instituted
where
subject
matter
situate

16 Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits,
- (b) for the partition of immoveable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain

Explanation—In this section “property” means property situate in British India

Suits for
immoveable
property
situate within
jurisdiction
of different
Courts

17 Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property, is situate

Provided

(Part I—Suits in general Place of Suing)

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court

18 (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction

Place of institution of suit where local limits of jurisdiction of Courts are uncertain

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction

(2) Where a statement has not been recorded under subsection (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice

19 Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts

Suits for compensation for wrongs to person or moveables.

Illustrations

(a) A, residing in Delhi, beats B in Calcutta, B may sue A either in Calcutta or in Delhi

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B B may sue A either in Calcutta or in Delhi

20 Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

Other suits to be instituted where defendants reside or cause of action arises

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, or

(b) any

(Part I—Suits in general Place of Sung)

- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution, or
- (c) the cause of action, wholly or in part, arises

Explanation I—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence

Explanation II—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place

Illustrations

(a) A is a tradesman in Calcutta B carries on business in Delhi B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company A delivers the goods accordingly in Calcutta A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business

(b) A resides at Simla, B at Calcutta and C at Delhi A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A A may sue B and C at Benares where the cause of action arose He may also sue them at Calcutta, where B resides, or at Delhi, where C resides, but in each of these cases, if the non resident defendant objects, the suit cannot proceed without the leave of the Court

Objections to jurisdiction

21. No objection as to the place of sung shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice

Power to transfer suits which may be instituted in more than one Court

22 Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred

to

(Part I—Suits in general Place of Suing)

to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed

23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court

To what Court application lies

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate

24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

General power of transfer and withdrawal.

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—
 - (i) try or dispose of the same, or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court

(4) The

(Part I—Suits in general Place of Suing Institution of Suits Summons and Discovery)

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes

Power of Provincial Government to transfer suits

25 (1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the ¹[Provincial Government], ²[which] may by notification in the ³[official Gazette], transfer such suit, appeal or proceeding to any other High Court

⁴[Provided that no suit, appeal or proceeding shall be transferred to a High Court without the consent of the Provincial Government of the Province in which that High Court has its principal seat]

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case

INSTITUTION OF SUITS

Institution of suits

26 Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed

SUMMONS AND DISCOVERY

Summons to defendants

27 Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed

Service of summons where defendant resides in another province

28 (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto

29 Summonses

¹ These words were substituted for the words "Governor General in Council" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² This word was substituted for the word "who" by para 5, *ibid*

³ These words were substituted for the words "Gazette of India" by para 4, *ibid*

⁴ This proviso was added by para 3 and Sch I, *ibid*

(Part I—Suits in general Summons and Discovery)

29 Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts

Service of foreign summonses

¹[Provided that the Courts issuing such summonses have been established or continued by the authority of the Central Government or of the Crown Representative, or that the Provincial Government by whose Courts a summons is to be served has by notification in the official Gazette declared the provisions of this section to apply to Courts of the Province]

30 Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

Power to order discovery and the like

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence,
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid,
- (c) order any fact to be proved by affidavit

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Summonses to witness

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

Penalty for default.

- (a) issue a warrant for his arrest,
- (b) attach and sell his property,
- (c) impose a fine upon him not exceeding five hundred rupees,
- (d) order him to furnish security for his appearance and in default commit him to the civil prison

JUDGMENT

¹ This proviso was substituted by para 3 and Sch I of the Govt of India (Adaptation of Indian Laws) Order, 1937

(Part I—Suits in general Judgment and Decree Interest Costs)

JUDGMENT AND DECREE

Judgment and decree.

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow

INTEREST

Interest

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie

COSTS

Costs

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing

(3) The Court may give interest on costs at any rate not exceeding six per cent per annum, and such interest shall be added to the costs and shall be recoverable as such

Compensatory costs in respect of false or vexatious claims or defences.

¹[35A (1) If in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the

¹ This section was inserted by s 2 of the Civil Procedure (Amendment) Act, 1922 (9 of 1922)

(Part I—Suits in general Costs Part II—Execution.
General)

the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation

(2) No Court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less

IX of 1887

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence]

PART II.
EXECUTION**GENERAL**

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders Applications to orders

(Part II—Execution General Courts by which decrees may be executed)

Definition of Court which passed a decree

37 The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit

COURTS BY WHICH DECREES MAY BE EXECUTED

Court by which decree may be executed.
Transfer of decree

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution

39 (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing that the decree should be executed by such other Court

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction

40 Where

(Part II—Execution Courts by which decrees may be executed)

40 Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province

Transfer of decrees to Court in another province

41 The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure

Result of execution proceedings to be certified.

42 The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Powers of Court in executing transferred decree

43. Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of ¹[the Central Government or the Crown Representative] in the territories of any foreign Prince or State, may if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India

Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory

²[44 The Provincial Government may by notification in the official Gazette declare that the decrees of any Civil or Revenue Courts in any Indian State, not being Courts established or continued by the authority of the Central Government or of the Crown Representative, or any class of such decrees, may be executed in the Province as if they had been passed by Courts of British India]

Execution of decrees passed by Courts of Indian States

³[44A (1) Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in British India as if it had been passed by the District Court

Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory

(2) Together

¹ These words were substituted for the words "the Governor General and Council" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² This section was substituted for the original section, *ibid*

³ This section was inserted by s 2 of the Code of Civil Procedure (Amendment) Act, 1937 (8 of 1937)

(Part II—Execution Courts by which decrees may be executed)

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13

Explanation 1—‘Superior Courts’, with reference to the United Kingdom, means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham

Explanation 2—‘Reciprocating territory’ means any country, or territory, situated in any part of His Majesty’s Dominions ¹* * which the ²[Central Government] may, from time to time, by notification in the ³[official Gazette] declare to be reciprocating territory for the purposes of this section, and ‘superior Courts’, with reference to any such territory, means such Courts as may be specified in the said notification

Explanation 3—‘Decree’, with reference to a superior Court, means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, and

(a) with reference to superior Courts in the United Kingdom, includes judgments given and decrees made in any Court in appeals against such decrees or judgments, but

(b) in no case includes an arbitration award, even if such award is enforceable as a decree or judgment]

[45 So

¹ The words “or in India” were omitted by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937 read with the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937

² These words were substituted for the words “Governor General in Council” by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

³ These words were substituted for the words “Gazette of India” by para 4, *ibid*

(Part II—Execution Courts by which decrees may be executed Questions to be determined by Court executing decree)

¹[45. So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any Province to send a decree for execution to any Court established or continued by the authority of the Central Government or of the Crown Representative in the territories of any foreign Prince or State to which the Provincial Government has by notification in the official Gazette declared this section to apply]

Execution decrees in foreign territory

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept

Precepts.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

47 (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit

Questions to be determined by the Court executing decree

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court

Explanation.

¹ This section was substituted for the original section by para 3 and Sch 1 of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part II—Execution Questions to be determined by Court executing decree Limit of time for execution. Transferees and legal representatives)

Explanation—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit

LIMIT OF TIME FOR EXECUTION

Execution barred in certain cases

48 (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

- (a) the date of the decree sought to be executed, or,
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree

(2) Nothing in this section shall be deemed—

- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application or
- (b) to limit or otherwise affect the operation of article 180 of the second Schedule to the Indian Limitation Act, 1877¹

XV of 1877

TRANSFEREES AND LEGAL REPRESENTATIVES

Transferee

49 Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder

Legal representative

50 (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased

(2) Where

¹ See now the Indian Limitation Act, 1908 (9 of 1908), Sch I, Art 183

*(Part II—Execution Transferees and legal representatives
Procedure in execution)*

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of, and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit

PROCEDURE IN EXECUTION

51 Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

Powers of
Court to
enforce
execution

- (a) by delivery of any property specifically decreed,
- (b) by attachment and sale or by sale without attachment of any property,
- (c) by arrest and detention in prison,
- (d) by appointing a receiver, or
- (e) in such other manner as the nature of the relief granted may require

¹[Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that

¹ This proviso was added by s 2 of the Code of Civil Procedure (Amendment) Act, 1936 (21 of 1936)

(Part II—Execution Procedure in execution)

- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account

Explanation—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force is exempt from attachment in execution of the decree]

Enforcement of decree against legal representative

52 (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally

Liability of ancestral property

53 For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative

Partition of estate or separation of share¹

54 Where the decree is for the partition of an undivided estate assessed to the payment of revenue to ¹[the Crown], or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the

Collector

¹ These words were substituted for the words "the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part II—Execution Procedure in execution Arrest and detention)

Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares of such estates

ARREST AND DETENTION

55 (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate or, where such civil prison does not afford suitable accommodation, in any other place which the ¹[Provincial Government] may appoint for the detention of persons ordered by the Courts of such district to be detained. Arrest and detention.

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found

Provided, thirdly, that if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable faculty for withdrawing, may enter the room for the purpose of making the arrest

Provided, fourthly, that where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part II — Execution Arrest and detention)

the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him

(2) The ¹[Provincial Government] may, by notification in the ²[official Gazette] declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the ¹[Provincial Government] in this behalf

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he ³[may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceedings upon the application or upon the decree in execution of which he was arrested, the Court ⁴[may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree

56 Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money

57 The ¹[Provincial Government] may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors

58 (1) Every

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "local official Gazette", *ibid*

³ These words were substituted for the words "will be discharged" by s 2 of the Code of Civil Procedure (Amendment) Act, 1921 (3 of 1921)

⁴ These words were substituted for the words "shall release", *ibid*

(Part II —Execution Arrest and detention)

58 (1) Every person detained in the civil prison in execution of a decree shall be so detained,— Detention and release*

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

(b) in any other case for a period of six weeks

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison

59 (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness Release on ground of illness

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the '[Provincial Government] on the ground of the existence of any infectious or contagious disease, or

(b) by

* These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order 1937

(Part II —Execution Arrest and detention Attachment)

- (b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58

ATTACHMENT

Property
liable to
attachment
and sale in
execution of
decree

60 (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf

Provided that the following particulars shall not be liable to such attachment or sale, namely —

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman,
- (b) tools of artizans and where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section,

(c) houses

(Part, II.—Execution, Attachment.)

- (c) houses, and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him
- (d) books of account,
- (e) a mere right to sue for damages,
- (f) any right of personal service,
- (g) stipends and gratuities allowed to ¹[pensioners of the Crown] or payable out of any service family pension fund notified in the ²[official Gazette] by ³[the Central Government or the Provincial Government] in this behalf, and political pensions,
- ⁴[(h) the wages of labourers and domestic servants, whether payable in money or in kind, and salary, to the extent of the first hundred rupees and one-half the remainder of such salary,
- (i) the salary of any public officer or of any servant of a railway company or local authority to the extent of the first hundred rupees and one-half the remainder of such salary,

Provided that, where the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree],

(j) the

¹ These words were substituted for the words "pensioners of the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "Gazette of India" by para 4, *ibid*

³ These words were substituted for the words "the Governor General in Council" by para 3 and Sch I, *ibid*

⁴ Clauses (h) and (i) were substituted for the original clauses by s. 2 of the Code of Civil Procedure (Second Amendment) Act, 1937 (9 of 1937) (with effect from 1st June 1937)

(Part II —Execution Attachment) ' 1

(j) the pay and allowances of persons to whom the ¹[Indian Army Act, 1911, or the Burma Army Act applies] ²[or of persons other than commissioned officers to whom the Naval Discipline Act as modified by the Indian Navy (Discipline) Act, 1934, applies],

VIII of 1911

29 & 30 Viet.
C. 109 XXXIV
of 1934

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, ³[1925], for the time being applies in so far as they are declared by the said Act not to be liable to attachment,

XIX of 1925.

⁴[(l) any allowance forming part of the emoluments of any public officer or of any servant of a railway company or local authority which the ⁵[appropriate Government] may by notification in the ⁶[official Gazette] declare to be exempt from attachment, and any subsistence grant or allowance made to any such officer or servant while under suspension,]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest,

(n) a right to future maintenance,

(o) any allowance declared by ⁷[any Indian law], to be exempt from liability to attachment or sale in execution of a decree, and,

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property

which,

¹ These words were substituted for the words "Indian Articles of War apply" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were inserted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

³ These figures were substituted for the figures "1897" by s 2 of the Code of Civil Procedure (Second Amendment) Act, 1937 (9 of 1937) (with effect from 1st June, 1937)

⁴ This clause was substituted for the original clause by s 2, *ibid* (with effect from 1st June, 1937)

⁵ These words were substituted for the words "Governor General in Council" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937, read with the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937

⁶ These words were substituted for the words "Gazette of India", by para 4 of the Government of India Adaptation of Indian (Laws) Order, 1937

⁷ These words were substituted for the words "any law passed under the Indian Council Acts, 1861 and 1892", *ibid*

(Part II—Execution Attachment)

which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue

¹[*Explanation 1*—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable ²[and in the case of salary other than salary of a public officer or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable]

³[*Explanation 2*—In clauses (h) and (i), 'salary' means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (l), derived by a person from his employment whether on duty or on leave]

⁴[*Explanation 3*—In clause (l) "appropriate Government" means—

- (i) as respects any public officer in the service of the Central Government, or any servant of a Federal Railway or of a cantonment authority or of the port authority of a major port, the Central Government,
- (ii) as respects any public officer employed in connection with the exercise of the functions of the Crown in its relations with Indian States, the Crown Representative, and
- (iii) as respects any other public officer or a servant of any other railway or local authority, the Provincial Government]

(2) Nothing in this section shall be deemed—

- ⁵* to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment)

¹ The original *Explanation* was renumbered *Explanation (1)* by s 2 of the Code of Civil Procedure (Second Amendment) Act, 1937 (9 of 1937) (with effect from 1st June, 1937)

² These words were added, *ibid*, (with effect from 1st June, 1937)

³ This *Explanation* was added, *ibid*, (with effect from 1st June, 1937)

⁴ This *Explanation* was added by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937, read with the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937

⁵ The letter and brackets (a) was repealed by s 3 and Sch II of the Repealing and Amending Act, 1914 (10 of 1914)

(Part II —Execution Attachment)

enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land ^{1*}

2* * * * *

Partial exemption of agricultural produce

61 The ³[Provincial Government], ^{4*} * * * may, by general or special order published in the ⁵[official Gazette] declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the ³[Provincial Government] to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree

Seizure of property in dwelling-house

62 (1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw, and, after allowing reasonable time for her to withdraw

¹ The word "or" was omitted by s 3 and Sch II of the Repealing and Amending Act, 1914 (10 of 1914)

² Clause (b) was repealed, *ibid*

³ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

⁴ The words "with the previous sanction of the Governor General in Council" were omitted by s 2 and Sch I, Pt I of the Devolution Act, 1920 (38 of 1920)

⁵ These words were substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part II — Execution Attachment, Sale)

withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal

63 (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached

Property attached in execution of decrees of several Courts.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees

Explanation — For the purposes of this section claims

64 Where an attachment has been made, any private transfer or delivery of the property attached or of any interest

Private alienation of property after attachment be void

be void as against all claims enforceable under the attachment and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall enforceable under an attachment include claims for the rateable distribution of assets

SALE.

65. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute

Purchaser's title

66 (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right

of

(Part II—Execution Sale Delegation to Collector of power to execute decrees against immoveable property)

of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner

Power for Provincial Government to make rules as to sales of land in execution of decrees for payment of money

67 ¹[(1)] The ²[Provincial Government] ³* * * may, by notification in the ⁴[official Gazette], make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the ²[Provincial Government] to make it impossible to fix their value

⁵[(2)] When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the ²[Provincial Government] may, by notification in the ⁴[official Gazette] declare such rules to be in force, or may, ³* * * by a like notification, modify the same

Every notification issued in the exercise of the powers conferred by this sub-section shall set out the rules so continued or modified]

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY

Power to prescribe rules for transferring to Collector execution of certain decrees

68 The ²[Provincial Government] may, ³* * *, declare, by notification in the ⁴[official Gazette] that in any local area the execution of decrees in cases in which a Court has ordered

¹ The original section 67 was renumbered as s 67 (1) by s 3 of the Code of Civil Procedure (Amendment) Act, 1914 (1 of 1914)

² These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

³ The words "with the previous sanction of the Governor General in Council" were omitted by s 2 and Sch I, Pt I of the Devolution Act, 1920 (38 of 1920)

⁴ These words were substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

⁵ This sub section was added by s 3 of the Code of Civil Procedure (Amendment) Act, 1914 (1 of 1914)

(Part II—Execution Delegation to Collector of power to execute decrees against immoveable property)

ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector

69 The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section

Provisions of Third Schedule apply

70 (1) The ¹[Provincial Government] may make rules consistent with the aforesaid provisions—

Rules of procedure

(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court,

(b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector,

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector

(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court

Jurisdiction of Civil Courts barred

71 In

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order 1937

(Part II — Execution Delegation to Collector of power to execute decrees against immoveable property Distribution of assets)

Collector deemed to be acting judicially

71 In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially

Where Court may authorize Collector to stay public sale of land.

72 (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable

DISTRIBUTION OF ASSETS

Proceeds of execution sale to be rateably distributed among decree holders

73 (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons

Provided as follows —

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale,
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold,

(c) where

(Part II —Execution Distribution of assets Resistance to execution)

(c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

- first, in defraying the expenses of the sale,
- secondly, in discharging the amount due under the decree,
- thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any), and
- fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets

(3) Nothing in this section affects any right of ¹[the Crown]

RESISTANCE TO EXECUTION

74 Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained, in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property

Resistance to execution

Part III

¹These words were substituted for the words "the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part III—Incidental proceedings Commissions)

PART III.**INCIDENTAL PROCEEDINGS****COMMISSIONS**Power of
Court to issue
commissions

75 Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

- (a) to examine any person,
- (b) to make a local investigation,
- (c) to examine or adjust accounts, or
- (d) to make a partition

Commission to
another
Court

76 (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order

Letter of
request

77 In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within British India

Commissions
issued by
foreign
Courts

78 ¹[Subject to such conditions and limitations as may be prescribed], the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by ¹[or at the instance of]—

- (a) Courts situate beyond the limits of British India and established or continued by the authority of His

Majesty

¹These words were inserted by s 2 of the Code of Civil Procedure (Amendment) Act, 1932 (10 of 1932)

(Part III—Incidental proceedings Commissions Part IV
—Suits in particular cases Suits by or against the
Crown or public officers in their official capacity)

Majesty or of ¹[the Central Government or of the
Crown Representative], or

(b) Courts situate in any part of the British Empire other
than British India, or

(c) Courts of any foreign country ²* * * * *

PART IV

SUITS IN PARTICULAR CASES

SUITS BY OR AGAINST ³[THE CROWN] OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

⁴[79 Subject to the provisions of sections 179 and 185 of ^{Suits by or against the Crown} the Government of India Act, 1935, in a suit by or against the Crown the authority to be named as plaintiff or defendant, as the case may be, shall be—

23 Geo V, c 2

(a) in the case of a suit by or against the Central Govern-
ment the Governor-General in Council before the
establishment of the Federation of India, and there-
after, the Federation,

(b) in the case of a suit by or against a Provincial Govern-
ment, the Province, and

(c) in the case of a suit by or against the Crown Represen-
tative, the Secretary of State]

80 No suit shall be instituted against ⁵[the Crown], or ^{Notice} against a public officer in respect of any act purporting to be
done

¹ These words were substituted for the words "the Governor General in Council" by para 3 and Sch I of the Government of India (Adaptation of Indian Law) Order, 1937

² The words "for the time being in alliance with His Majesty" were omitted by s 2 of the Code of Civil Procedure (Amendment) Act, 1932 (10 of 1932)

³ These words were substituted for the words "the Government" by para 3 of the Government of India (Adaptation of Indian Law) Order, 1937

⁴ This section was substituted for the original section, *ibid*

⁵ These words were substituted for the words "the Secretary of State for India in Council", *ibid*

(Part IV—Suits in particular cases Suits by or against the Crown or public officers in their official capacity)

done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been,¹[delivered to or left at the office of—

- (a) in the case of a suit against the Central Government, a Secretary to that Government,
- (b) in the case of a suit against the Crown Representative, the Political Secretary,
- (c) in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District, and
- (d) in the case of a suit against the Secretary of State, a Secretary to the Central Government, the Political Secretary and a Secretary to the Provincial Government of the Province where the suit is instituted],

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left

Exemption from arrest and personal appearance

81 In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person

Execution of decree

82 (1) Where the decree is against ²[the Crown] or against a public officer in respect of any such act as aforesaid, a time shall

¹ These words were substituted for the original words, by para 3 of the Government of India (Adaptation of Indian Laws) Order 1937

² These words were substituted for the words "the Secretary of State for India in Council" by para 3 and Sch I, ibid

(Part IV.—Suits in particular cases. Suits by or against the Crown or public officers in their official capacity Suits by aliens and by or against Foreign Rulers and Rulers of Indian States)

shall be specified in the decree within which it shall be satisfied, and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the ¹[Provincial Government]

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report

SUITS BY ALIENS AND BY OR AGAINST ²[FOREIGN RULERS AND RULERS OF INDIAN STATES]

83. (1) Alien enemies residing in British India with the permission of the ³[Central Government], and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty When aliens may sue

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the ⁴[Central Government] shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country

84 (1) A foreign State may sue in any Court of British India When foreign States may sue

Provided that such State has been recognized by His Majesty or by the ³[Central Government]

Provided

¹ These words were substituted for the words "Local Government" by para 4, and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "Foreign and Native Rulers" by para 3 and Sch I, *ibid*

³ These words were substituted for the words "Governor General in Council" by para 4, *ibid*

⁴ These words were substituted for the words "Government of India" by para 4, *ibid*.

(Part IV—Suits in particular cases Suits by aliens and by
or against Foreign Rulers and Rulers of Indian States)

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the ¹[Central Government]

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs

85 (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief

²[Explanation—For the purposes of this sub-section the expression “the Government” means—

(a) in the case of any Indian State, the Crown Representative, and

(b) in any other case, the Central Government]

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto

Suits against Princes, Chiefs, ambassadors and envoys.

86 (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may ³[in the case of the Ruling Chief of an Indian State with the consent of the Crown Representative, certified by the signature of the Political Secretary, and

in

¹ These words were substituted for the words “Governor General in Council”, by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

² The Explanation was added by para 3 and Sch I, *ibid*

³ These words were substituted for the original words, *ibid*

(Part IV—Suits in particular cases Suits by aliens and by
or against Foreign Rulers and Rulers of Indian States)

in any other case with the consent of the Central Government, certified by the signature of a Secretary to that Government], but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued, but it shall not be given unless it appears to ¹[the consenting authority] that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with ²[such consent as is mentioned in sub-section (1)] certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy

³[(4) The Central Government or the Crown Representative, as the case may be, may by notification in the Gazette of India authorise a Provincial Government and any Secretary to that Government to exercise with respect to any Prince, Chief, ambassador or envoy named in the notification the functions assigned by the foregoing sub-sections to the consenting authority and a certifying officer respectively]

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property

¹ These words were substituted for the words "the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "the consent of the Governor General in Council", *ibid*

³ This sub section was substituted, *ibid*

(Part IV—Suits in particular cases Suits by aliens and by or against Foreign Rulers and Rulers of Indian States Interpleader Part V—Special proceedings Arbitration)

Style of Princes and Chiefs as parties to suits

87 A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State

Provided that in giving the consent referred to in the foregoing section ¹[the Central Government, the Crown Representative or the Provincial Government], as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name

INTERPLEADER

Where interpleader suit may be instituted

88 Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader' shall be instituted

PART V

SPECIAL PROCEEDINGS

ARBITRATION

Arbitration

89 (1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the IX of 1899 time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement

¹ These words were substituted for the words "the Governor General in Council or the Local Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part V—*Special proceedings Arbitration Special case Suits relating to public matters*)

agreement or reference made before the commencement of this Code

SPECIAL CASE

90 Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed Power to state case for opinion of Court

SUITS RELATING TO PUBLIC MATTERS

91 (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case Public nuisances.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions

92 (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the ¹[Provincial Government] within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree— Public charities

- (a) removing any trustee,
- (b) appointing a new trustee,
- (c) vesting any property in a trustee,
- (d) directing accounts and inquiries

(e) declaring

¹ These words were substituted for the words "Local Government," by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part V—Special proceedings Suits relating to public matters Part VI—Supplemental proceedings)

- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust,
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged,
- (g) settling a scheme, or
- (h) granting such further or other relief as the nature of the case may require

(2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section XX of 1863

Exercise of powers of Advocate General outside Presidency-towns

93 The powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency-towns, be with the previous sanction of the ¹[Provincial Government] exercised also by the Collector or by such officer as the ¹[Provincial Government] may appoint in this behalf

PART VI.

SUPPLEMENTAL PROCEEDINGS

Supplemental proceedings

94 In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison,
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property,
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold,

(d) appoint

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Part VI—Supplemental proceedings Part VII—Appeals.
Appeals from original decrees)

- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property,
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient

95 (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

Compensation for obtaining arrest, attachment or injunction on insufficient grounds

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
- (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same.

the defendant may apply to the Court and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction

PART VII.

APPEALS

APPEALS FROM ORIGINAL DECREES

96 (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court

Appeal from original decree

(2) An appeal may lie from an original decree passed *ex parte*

(3) No

(Part VII.—*Appeals Appeals from original decrees Appeals from appellate decrees*)

(3) No appeal shall lie from a decree passed by the Court with the consent of parties

Appeal from final decree where no appeal from preliminary decree

97 Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree

Decision where appeal heard by two or more Judges

98 (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it

¹[(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court]

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction

99 No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court

APPEALS FROM APPELLATE DECREES

Second appeal

100 (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree

¹ This sub section was added by s 2 and the First Sch of the Repealing and Amending Act, 1923 (19 of 1928)

(Part VII—Appeals Appeals from appellate decrees Appeals from orders)

decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely —

- (a) the decision being contrary to law or to some usage having the force of law,
- (b) the decision having failed to determine some material issue of law or usage having the force of law,
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits

(2) An appeal may lie under this section from an appellate decree passed *ex parte*

101 No second appeal shall lie except on the grounds mentioned in section 100

Second appeal on no other grounds.

102 No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees

No second appeal in certain suits.

103 In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal ¹[which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of section 100]

Power of High Court to determine issues of fact

APPEALS FROM ORDERS

104 (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders —

Orders from which appeal lies

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court,

(b) an

¹ These words were substituted for the words "but not determined by the lower appellate Court" by s 2 of the Code of Civil Procedure (Amendment) Act, 1926 (6 of 1926)

(Part VII—Appeals Appeals from orders)

- (b) an order on an award stated in the form of a special case,
- (c) an order modifying or correcting an award,
- (d) an order filing or refusing to file an agreement to refer to arbitration,
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration,
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court,
- ¹[(ff) an order under section 35A,]
- (g) an order under section 95,
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree,
- (i) any order made under rules from which an appeal is expressly allowed by rules

¹[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made]

(2) No appeal shall lie from any order passed in appeal under this section

Other orders

105 (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction, but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness

106 Where

¹ Clause (ff) and proviso to clause (i) were inserted by s 3 of the Civil Procedure (Amendment) Act, 1922 (9 of 1922)

(Part VII—*Appeals Appeals from orders General provisions relating to appeals Appeals to the King in Council*)

106 Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court

What Courts to hear appeals

GENERAL PROVISIONS RELATING TO APPEALS

107 (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

Powers of Appellate Court

- (a) to determine a case finally,
- (b) to remand a case,
- (c) to frame issues and refer them for trial,
- (d) to take additional evidence or to require such evidence to be taken

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein

108 The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

Procedure in appeals from appellate decrees and orders

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided

APPEALS TO THE KING IN COUNCIL

109 Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

When appeals lie to King in Council

- (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction,
- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction, and
- (c) from

(Part VII—Appeals Appeals to the King in Council)

(c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council

Value of subject matter

110 In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law

Bar of certain appeals

111 Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—

(a) from the decree or order of one Judge of a High Court¹ [constituted by His Majesty by Letters Patent], or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being, or

(b) from any decree from which under section 102 no second appeal lies

Appeals to Federal Court

² [111A—Where a certificate has been given under section 205 (1) of the Government of India Act, 1935, the three last preceding sections shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council, and accordingly references to His Majesty shall be construed as references to the Federal Court

26 Geo V, c.2.

Provided

¹ These words were substituted for the words "established under the Indian High Courts Act, 1861 or the Government of India Act, 1915" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² This section was inserted, *ibid*

(Part VII—Appeals Appeals to the King in Council. Part VIII—Reference, review and revision)

Provided that—

- (a) so much of the said sections as delimits the cases in which an appeal will lie shall be construed as delimiting the cases in which an appeal will lie without the leave of the Federal Court otherwise than on the ground that a substantial question of law as to the interpretation of the said Act, or any Order in Council made thereunder, has been wrongly decided,
- (b) in determining under clause (c) of section 109 whether the case is a fit one for appeal, and, under section 110, whether the appeal involves a substantial question of law, any question of law as to the interpretation of the said Act, or any Order in Council made thereunder, shall be left out of account]

112 (1) Nothing contained in this Code shall be deemed— *Savings*

- (a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or
- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts

PART VIII.

REFERENCE, REVIEW AND REVISION

113 Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit Reference to High Court.

114 Subject

(Part VIII—Reference, review and revision Part IX—
Special provisions relating to the Chartered High Courts)

Review 114 Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit

Revision 115 The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit

PART IX.

SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS

Part to apply only to certain High Courts

116 This Part applies only to High Courts which are or may hereafter be ¹[constituted by His Majesty by Letters Patent]

117 Save

¹ These words were substituted for the words "established under the Indian High Courts Act, 1861, or the Government of India Act, 1915" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part IX—Special provisions relating to the Chartered High Courts Part X—Rules)

117 Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts

Application of Code to High Courts

118 Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs,

Execution of decree before ascertainment of costs

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation

119 Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys

Unauthorised persons not to address Court

120 (1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20

Provisions not applicable to High Court in original civil jurisdiction

1* * * * *

PART X. RULES

121 The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part

Effect of rules, in First Schedule

122 High Courts ²[constituted by His Majesty by Letters Patent] ³[and the Chief Court of Oudh] ⁴* * *, may, from time

Power of certain High Courts to make rules

¹ Sub section (2) was repealed by s 127 and Sch III of the Presidency-towns Insolvency Act, 1909 (3 of 1909)

² These words were substituted for the original words by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

³ These words were inserted by s 2 and Sch of the Oudh Courts (Supplementary) Act, 1925 (32 of 1925), the words "Courts of Oudh and Sindh" are to be substituted for the words "Court of Oudh" by s 2 and Sch of the Sindh Courts (Supplementary) Act, 1926 (34 of 1926), when that Act comes into force

⁴ The words "Chief Court of Lower Burma" were substituted for the original words "Chief Courts of the Punjab and Lower Burma" by s 2 and Sch I of the Repealing and Amending Act, 1919 (18 of 1919), and the words "and the Chief Court of Lower Burma" were subsequently repealed by s 3 and Sch II of the Repealing and Amending Act, 1923 (11 of 1923)

(Part X—Rules)

time to time after previous publication, make rules¹ regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule

Constitution of
Rule Committees in
certain
provinces

123 (1) A Committee, to be called the Rule Committee, shall be constituted at ²[the town which is the usual place of sitting of each of the High Courts ³[and of the Chief Court]
4* * * referred to in section 122]

(2) Each such Committee shall consist of the following persons, namely —

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or 5* * * a Divisional Judge for three years,
- (b) a barrister practising in that Court,
- (c) an advocate (not being a barrister) or vakil or pleader enrolled in that Court,
- (d) a Judge of a Civil Court subordinate to the High Court, and
- (e) in the towns of Calcutta, Madras and Bombay, an attorney

(3) The

¹ For rules made by different High Courts and the Chief Courts of Oudh see Appendices I to VIII at the end of this volume

² These words were substituted for the words "each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon" by s 2 and Sch of the Amending Act, 1916 (13 of 1916)

³ These words were inserted by s 2 and Sch of the Oudh Courts (Supplementary) Act, 1925 (32 of 1925), the words "Chief Courts" are to be substituted for the words "of the Chief Court" by s 2 and Sch of the Sindh Courts (Supplementary) Act, 1926 (34 of 1926), when that Act comes into force

⁴ The words "and of the Chief Court" were substituted for the words "Chief Courts" by Act 18 of 1919 and the words "and of the Chief Court" were subsequently repealed by s 3 and Sch II of the Repealing and Amending Act, 1923 (11 of 1923)

⁵ The words "(in Burma)" were substituted for the original words "(in the Punjab or Burma)" by s 2 and Sch I of the Repealing and Amending Act, 1919 (18 of 1919), and the words "(in Burma)" were subsequently repealed by s 3 and Sch II of the Repealing and Amending Act, 1923 (11 of 1923)

(3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf, and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf ¹[by the Provincial Government]

124 Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration

Committee to report to High Court

125 High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions ²[as, ³[the Provincial Government], may determine]

Power of other High Courts to make rules.

Provided that any such High Court may, after previous publication, make a rule extending within the local limits

of

¹ These words were substituted for the words " by the Governor General in Council or by the Local Government, as the case may be " by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words " as the Governor General in Council may determine " by s 2 and Sch I of the Devolution Act, 1920 (38 of 1920)

³ These words were substituted for the words "in the case of the Court of the Judicial Commissioner of Coorg, the Governor General in Council, and, in other cases the Local Government", by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part X—Rules)

of its jurisdiction any rules which have been made by any other High Court

Rules to be subject to approval

¹[126 Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the Province in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any Province to the previous approval of the Governor General]

Publication of rules

127 Rules so made and ²[approved] shall be published in the ³[official Gazette * * *], and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule

Matters for which rules may provide

128 (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1) such rules may provide for all or any of the following matters, namely —

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service,
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale,
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction,

(d) procedure

¹ This section was substituted, by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² This word was substituted for the word "sanctioned" by s 2 and Sch I of the Repealing and Amending Act, 1917 (24 of 1917)

³ These words were substituted for the words "Gazette of India or in the local official Gazette as the case may be" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

(Part X —Rules)

- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts,
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not,
- (f) summary procedure—
 - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
 - on a contract express or implied, or
 - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or
 - on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only, or
 - on a trust, or
 - (ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant,
- (g) procedure by way of originating summons,
- (h) consolidation of suits, appeals and other proceedings,
- (i) delegation to any Registrar, Prothonotary or master or other official of the Court of any judicial, quasi-judicial and non-judicial duties, and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts

(Part X—Rules Part XI—Miscellaneous)

Power of Chartered High Courts to make rules as to their original civil procedure

129 Notwithstanding anything in this Code, any High Court ¹[constituted by His Majesty by Letters Patent] may make such rules not inconsistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code

Power of other High Courts to make rules as to matters other than procedure

²[130 A High Court not constituted by His Majesty by Letters Patent may, with the previous approval of the Provincial Government, make with respect to any matter other than procedure any rule which a High Court so constituted might under section 224 of the Government of India Act, 1935, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town]

26 Oct

Publication of rules

131 Rules made in accordance with section 129 or section 130 shall be published in the ³[official Gazette * * *], and shall from the date of publication or from such other date as may be specified have the force of law

PART XI.

MISCELLANEOUS

Exemption of certain women from personal appearance

132 (1) Women who, according to the customs and manners of the country ought not to be compelled to appear in public shall be exempt from personal appearance in Court

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code

133 (1) The

¹ These words were substituted for the words "established under the Indian High Courts Act, 1861, or the Government of India Act, 1915" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² This section was substituted for the original section, *ibid*

³ These words were substituted for the words "Gazette of India or in the local official Gazette as the case may be," by para 4, *ibid*

(Part XI—Miscellaneous)

133 (1) The ¹[Provincial Government] may, by notification in the ²[official Gazette] exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption

Exemption of other persons

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the ¹[Provincial Government] and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs

134 The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code

Arrest other than in execution of decree

135 (1) No Judge, Magistrate or other judicial officer shall be hable to arrest under civil process while going to, presiding in, or returning from, his Court

Exemption from arrest under civil process

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree

[135A (1) No

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "local official Gazette",

ibid

(Part XI—Miscellaneous)

Exemption of members of legislative bodies from arrest and detention under civil process

¹[135A (1) No person shall be liable to arrest or detention in prison under civil process—

²[(a) if he is a member of a unicameral Legislature or of either Chamber of a bicameral Legislature constituted under the Government of India Act, 1935, ^{26 Geo v, c 2.} during the continuance of any meeting of such Legislature or Chamber]

(b) if he is a member of any committee of such ³[Legislature or Chamber], during the continuance of any meeting of such committee,

⁴[(c) if he is a member of either Chamber of such a bicameral Legislature, during the continuance of a joint sitting, meeting, conference or joint committee of the Chambers of that Legislature,]

and during the fourteen days before and after such meeting or sitting

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1)]

Procedure where person to be arrested or property to be attached is outside district

136 (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment

(2) The

¹ This section was inserted by s 3 of the Legislative Members Exemption Act, 1925 (23 of 1925)

² This clause was substituted by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

³ These words were substituted for the words "Chamber or Council" *ibid*

⁴ This clause was substituted, *ibid*

(Part XI —Miscellaneous)

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself and shall inform the Court which issued or made such warrant or order of the arrest or attachment

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court in either of which cases the Court making the arrest shall release him

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, * * * * *¹, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras ²[or Bombay], as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court

137 (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the ³[Provincial Government] otherwise directs

Language of subordinate Courts

(2) The ³[Provincial Government] may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written

(3) Where

¹ The words "or of the Chief Court of Lower Burma" were omitted by para. 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "Bombay or Rangoon," *ibid*

³ These words were substituted for the words "Local Government" by para 4, *ibid*

(Part XI—Miscellaneous)

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English, but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him, and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation

Power of High Court to require evidence to be recorded in English

138 (1) The ¹[High Court] may, by notification in the ²[official Gazette] direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court

Oath on affidavit by whom to be administered

139 In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the ³[Provincial Government] has generally or specially empowered in this behalf,

may administer the oath to the deponent

Assessors in causes of salvage, etc

140 (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors, and such assessors shall attend and assist accordingly

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed

141 The

¹ These words were substituted for the words "Local Government" by s 2 and Sch, Pt I of the Decentralisation Act, 1914 (4 of 1914)

² These words were substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

³ These words were substituted for the words "Local Government,"

ibid

(Part XI —Miscellaneous)

141 The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction

Miscellaneous proceedings

142 All orders and notices served on or given to any person under the provisions of this Code shall be in writing

Orders and notices to be in writing

143 Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made

Postage

Provided that the ¹[Provincial Government] ²* * *, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof

144 (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed, and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal

Application for restitution

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)

145 Where any person has become liable as surety—

Enforcement of liability of surety

(a) for the performance of any decree or any part thereof,

or

(b) for

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

² The words "with the previous sanction of the Governor General in Council" were omitted by s 2 and Sch I, Pt I of the Devolution Act, 1920 (38 of 1920)

(Part XI—Miscellaneous)

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47

Provided that such notice as the Court in each case thinks sufficient has been given to the surety

Proceedings
by or against
representa-
tives

146 Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him

Consent or
agreement by
persons under
disability

147 In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement

Enlargement
of time

148 Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired

Power to
make up
deficiency of
court-fees

149 Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee, and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance

(Part XI —Miscellaneous)

150 Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred

Transfer of business

151 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court

Saving of inherent powers of Court.

152 Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties

Amendment of judgments, decrees or orders.

153 The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding

General power to amend

154 Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement

Saving of present right of appeal

155 The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in the fourth column thereof

Amendment of certain Acts

156 [Repeals] Repealed by s 3 and Schedule II of the Second Repealing and Amending Act, 1914 (17 of 1914)

157 Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf

Continuance of orders under repealed enactments

(Part XI —Miscellaneous)

Reference to
Code of Civil
Procedure and
other repealed
enactments

158 In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule

THE FIRST SCHEDULE

THE FIRST SCHEDULE.

ORDER I

Parties to Suits

RULES

- 1 Who may be joined as plaintiffs
- 2 Power of Court to order separate trials
- 3 Who may be joined as defendants
- 4 Court may give judgment for or against one or more of joint parties
- 5 Defendant need not be interested in all the relief claimed
- 6 Joinder of parties liable on same contract
- 7 When plaintiff in doubt from whom redress is to be sought
- 8 One person may sue or defend on behalf of all in same interest
- 9 Misjoinder and nonjoinder
- 10 Suit in name of wrong plaintiff
Court may strike out or add parties
Where defendant added, plaint to be amended
- 11 Conduct of suit
- 12 Appearance of one of several plaintiffs or defendants for others
- 13 Objections as to nonjoinder or misjoinder

ORDER II

Frame of Suit

- 1 Frame of suit
- 2 Suit to include the whole claim
Relinquishment of part of claim
Omission to sue for one of several reliefs
- 3 Joinder of causes of action
- 4 Only certain claims to be joined for recovery of immoveable property

5. Claims

RULES

- 5 Claims by or against executor, administrator or heir.
- 6 Power of Court to order separate trials
- 7 Objections as to misjoinder

ORDER III

Recognized Agents and Pleadors

- 1 Appearances, etc, may be in person, by recognised agent or by pleader
- 2 Recognized agents
- 3 Service of process on recognized agent
- 4 Appointment of pleader
- 5 Service of process on pleader
- 6 Agent to accept service
Appointment to be in writing and to be filed in Court.

ORDER IV

Institution of Suits

- 1 Suit to be commenced by plant
- 2 Register of suits

ORDER V

Issue and Service of Summons

Issue of Summons

- 1 Summons
- 2 Copy or statement annexed to summons
- 3 Court may order defendant or plaintiff to appear in person
- 4 No party to be ordered to appear in person unless resident within certain limits
- 5 Summons to be either to settle issues or for final disposal

RULES

- 6 Fixing day for appearance of defendant
- 7 Summons to order defendant to produce documents relied on by him
- 8 On issue of summons for final disposal, defendant to be directed to produce his witnesses

Service of Summons

- 9 Delivery or transmission of summons for service
- 10 Mode of service
- 11 Service on several defendants
- 12 Service to be on defendant in person when practicable, or on his agent
- 13 Service on agent by whom defendant carries on business
- 14 Service on agent in charge in suits for immoveable property
- 15 Where service may be on male member of defendant's family
- 16 Person served to sign acknowledgment
- 17 Procedure when defendant refuses to accept service, or cannot be found
- 18 Endorsement of time and manner of service
- 19 Examination of serving officer
- 20 Substituted service
 - Effect of substituted service
 - Where service substituted, time for appearance to be fixed
- 21 Service of summons where defendant resides within jurisdiction of another Court
- 22 Service, within Presidency-towns, of summons issued by Courts outside
- 23 Duty of Court to which summons is sent
- 24 Service on defendant in prison
- 25 Service where defendant resides out of British India and has no agent
- 26 Service in foreign territory through Political Agent or Court

RULES

- 27 Service on civil public officer or on servant of railway company or local authority
- 28 Service on soldiers, sailors or airmen
- 29 Duty of person to whom summons is delivered or sent for service
- 30 Substitution of letter for summons

ORDER VI

Pleadings generally

- 1 Pleading
- 2 Pleading to state material facts and not evidence
- 3 Forms of pleading
- 4 Particulars to be given where necessary
- 5 Further and better statement, or particulars
- 6 Condition precedent
- 7 Departure
- 8 Denial of contract
- 9 Effect of document to be stated
- 10 Malice, knowledge, etc
- 11 Notice
- 12 Implied contract, or relation
- 13 Presumptions of law
- 14 Pleading to be signed
- 15 Verification of pleadings
- 16 Striking out pleadings
- 17 Amendment of pleadings
- 18 Failure to amend after order

ORDER VII

Plaint

- 1 Particulars to be contained in plaint
- 2 In money suits

RULES

- 3 Where the subject-matter of the suit is immovable property
- 4 When plaintiff sues as representative
- 5 Defendant's interest and liability to be shown
- 6 Grounds of exemption from limitation law
- 7 Relief to be specifically stated.
- 8 Relief founded on separate grounds
- 9 Procedure of admitting plant
Concise statements
- 10 Return of plant
Procedure on returning plant
- 11 Rejection of plant
- 12 Procedure on rejecting plant
- 13 Where rejection of plant does not preclude presentation of fresh plant

Documents relied on in plant
- 14 Production of document on which plaintiff sues
List of other documents
- 15 Statement in case of documents not in plaintiff's possession or power
- 16 Suits on lost negotiable instruments
- 17 Production of shop-book
Original entry to be marked and returned
- 18 Inadmissibility of document not produced when plant filed.

 ORDER VIII
Written Statement and Set-off

- 1 Written statement
- 2 New facts must be specially pleaded
- 3 Denial to be specific.
- 4 Evasive denial
- 5 Specific denial
- 6 Particulars of set-off to be given in written statement.
Effect of set-off

7 Defence

RULES

7. Defence or set-off founded on separate grounds
- 8 New ground of defence
- 9 Subsequent pleadings
- 10 Procedure when party fails to present written statement called for by Court

 ORDER IX
Appearance of Parties and Consequence of Non appearance

- 1 Parties to appear on day fixed in summons for defendant to appear and answer
- 2 Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs
- 3 Where neither party appears, suit to be dismissed
- 4 Plaintiff may bring fresh suit or Court may restore suit to file¹
- 5 Dismissal of suit where plaintiff, after summons returned unserved fails for three months to apply for fresh summons
- 6 Procedure when only plaintiff appears
 - When summons duly served
 - When summons not duly served
 - When summons served, but not in due time
- 7 Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non appearance
- 8 Procedure where defendant only appears
- 9 Decree against plaintiff by default bars fresh suit
- 10 Procedure in case of non-attendance of one or more of several plaintiffs
- 11 Procedure in case of non-attendance of one or more of several defendants
- 12 Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person
 - Setting aside Decrees ex parte*
 - 13 Setting aside decree *ex parte* against defendant
 - 14 No decree to be set aside without notice to opposite party

ORDER X

Examination of Parties by the Court

RULES

- 1 Ascertainment whether allegations in pleadings are admitted or denied
- 2 Oral examination of party, or companion of party
- 3 Substance of examination to be written
- 4 Consequence of refusal or inability of pleader to answer

ORDER XI

Discovery and Inspection

- 1 Discovery by interrogatories
- 2 Particular interrogatories to be submitted
- 3 Costs of interrogatories
 - 1 Form of interrogatories
- 5 Corporations
- 6 Objections to interrogatories by answer
- 7 Setting aside and striking out interrogatories
- 8 Affidavit in answer, filing
- 9 Form of affidavit in answer
- 10 No exception to be taken
- 11 Order to answer or answer further
- 12 Application for discovery of documents
- 13 Affidavit of documents
- 14 Production of documents
- 15 Inspection of documents referred to in pleadings or affidavits
 - 16 Notice to produce
 - 17 Time for inspection when notice given
 - 18 Order for inspection
 - 19 Verified copies
 - 20 Premature discovery
 - 21 Non-compliance with order for discovery
 - 22 Using answers to interrogatories at trial
 - 23 Order to apply to minors

ORDER XII

ORDER XII

Admissions

RULES

- 1 Notice of admission of case
- 2 Notice to admit documents
- 3 Form of notice
- 4 Notice to admit facts
- 5 Form of admissions
- 6 Judgment on admissions
- 7 Affidavit of signature
- 8 Notice to produce documents
- 9 Costs

ORDER XIII

Production, Impounding and Return of Documents

- 1 Documentary evidence to be produced at first hearing
- 2 Effect of non-production of documents
- 3 Rejection of irrelevant or inadmissible documents
- 4 Endorsements on documents admitted in evidence
- 5 Endorsements on copies of admitted entries in books, accounts and records
- 6 Endorsements on documents rejected as inadmissible in evidence
- 7 Recording of admitted and return of rejected documents
- 8 Court may order any document to be impounded
- 9 Return of admitted documents
- 10 Court may send for papers from its own records or from other Courts
- 11 Provisions as to documents applied to material objects

ORDER XIV

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon

- 1 Framing of issues
- 2 Issues of law and of fact

3 Materials

RULES

- 3 Materials from which issues may be framed
- 4 Court may examine witnesses or documents before framing issues
- 5 Power to amend, and strike out, issues
- 6 Questions of fact or law may by agreement be stated in form of issues
- 7 Court, if satisfied that agreement was executed in good faith, may pronounce judgment

 ORDER XV
Disposal of the Suit at the first hearing

- 1 Parties not at issue
- 2 One of several defendants not at issue
- 3 Parties at issue
- 4 Failure to produce evidence

 ORDER XVI
Summoning and Attendance of Witnesses

- 1 Summons to attend to give evidence or produce documents
- 2 Expenses of witness to be paid into Court on applying for summons
 - Experts
 - Scale of expenses
- 3 Tender of expenses to witness
- 4 Procedure where insufficient sum paid in
 - Expenses of witnesses detained more than one day
- 5 Time, place and purpose of attendance to be specified in summons
- 6 Summons to produce document
- 7 Power to require persons present in Court to give evidence or produce document
- 8 Summons how served
- 9 Time for serving summons

RULES

- 10 Procedure where witness fails to comply with summons.
- 11 If witness appears, attachment may be withdrawn
- 12 Procedure if witness fails to appear
- 13 Mode of attachment
- 14 Court may of its own accord summon as witnesses-
strangers to suit
- 15 Duty of persons summoned to give evidence or produce-
document
- 16 When they may depart
- 17 Application of rules 10 to 13
- 18 Procedure where witness apprehended cannot give
evidence or produce document
- 19 No witness to be ordered to attend in person unless
resident within certain limits
- 20 Consequence of refusal of party to give evidence when
called on by Court
- 21 Rules as to witnesses to apply to parties summoned.

ORDER XVII

Adjournments

- 1 Court may grant time and adjourn hearing
Costs of adjournment
- 2 Procedure if parties fail to appear on day fixed
- 3 Court may proceed notwithstanding either party fails
to produce evidence, etc

ORDER XVIII

Hearing of the Suit and Examination of Witnesses

- 1 Right to begin
- 2 Statement and production of evidence
- 3 Evidence where several issues
- 4 Witnesses to be examined in open Court
- 5 How evidence shall be taken in appealable cases
- 6 When deposition to be interpreted

7 Evidence

RULES

- 7 Evidence under section 138
- 8 Memorandum when evidence not taken down by Judge
- 9 When evidence may be taken in English
- 10 Any particular question and answer may be taken down
- 11 Questions objected to and allowed by Court
- 12 Remarks on demeanour of witnesses
- 13 Memorandum of evidence in unappealable cases
- 14 Judge unable to make such memorandum to record reasons of his inability
- 15 Power to deal with evidence taken before another Judge
- 16 Power to examine witness immediately
- 17 Court may recall and examine witness
- 18 Power of Court to inspect

ORDER XIX

Affidavits

- 1 Power to order any point to be proved by affidavit
- 2 Power to order attendance of deponent for cross-examination
- 3 Matters to which affidavits shall be confined.

ORDER XX

Judgment and Decree

- 1 Judgment when pronounced
- 2 Power to pronounce judgment written by Judge's predecessor
- 3 Judgment to be signed
- 4 Judgments of Small Cause Courts
Judgments of other Courts
- 5 Court to state its decision on each issue
- 6 Contents of decree
- 7 Date of decree

RULES

- 8 Procedure where Judge has vacated office before signing decree
- 9 Decree for recovery of immoveable property
- 10 Decree for delivery of moveable property
- 11 Decree may direct payment by instalments
Order, after decree, for payment by instalments
- 12 Decree for possession and mesne profits
- 13 Decree in administration-suit
- 14 Decree in pre-emption suit
- 15 Decree in suit for dissolution of partnership
- 16 Decree in suit for account between principal and agent
- 17 Special directions as to accounts
- 18 Decree in suit for partition of property or separate possession of a share therein
- 19 Decree when set-off is allowed
Appeal from decree relating to set-off
- 20 Certified copies of judgment and decree to be furnished

 ORDER XXI
*Execution of Decrees and Orders**Payment under Decree*

- 1 Modes of paying money under decree
- 2 Payment out of Court to decree-holder

Courts executing Decrees

- 3 Lands situate in more than one jurisdiction
- 4 Transfer to Court of Small Causes
- 5 Mode of transfer
- 6 Procedure where Court desires that its own decree shall be executed by another Court
- 7 Court receiving copies of decree, etc., to file same without proof

8 Execution

RULES.

- 8 Execution of decree or order by Court to which it is sent
 9 Execution by High Court of decree transferred by other Court

Application for execution

- 10 Application for execution
 11 Oral application
 Written application
 12 Application for attachment of moveable property not in judgment-debtor's possession
 13 Application for attachment of immoveable property to contain certain particulars
 14 Power to require certified extract from Collector's register in certain cases
 15 Application for execution by joint decree-holder
 16 Application for execution by transferee of decree
 17 Procedure on receiving application for execution of decree
 18 Execution in case of cross-decrees
 19 Execution in case of cross-claims under same decree
 20 Cross-decrees and cross-claims in mortgage-suits
 21 Simultaneous execution
 22 Notice to show cause against execution in certain cases
 23 Procedure after issue of notice

Process for Execution

- 24 Process for execution
 25 Endorsement on process

Stay of Execution

- 26 When Court may stay execution
 Power to require security from, or impose conditions upon, judgment-debtor
 27 Liability of judgment-debtor discharged
 28 Order of Court which passed decree or of appellate Court to be binding upon Court applied to
 29 Stay of execution pending suit between decree-holder and judgment-debtor

Mode of execution

Mode of execution

RULES

- 30 Decree for payment of money
- 31 Decree for specific moveable property
- 32 Decree for specific performance, for restitution of conjugal rights, or for an injunction
- 33 Discretion of Court in executing decrees for restitution of conjugal rights
- 34 Decree for execution of document, or endorsement of negotiable instrument
- 35 Decree for immoveable property
- 36 Decree for delivery of immoveable property when in occupancy of tenant

Arrest and detention in the civil prison

- 37 Discretionary power to permit judgment debtor to show cause against detention in prison
- 38 Warrant for arrest to direct judgment-debtor to be brought up
- 39 Subsistence-allowance
- 40 Proceedings on appearance of judgment-debtor in obedience to notice or after arrest

Attachment of property

- 41 Examination of judgment-debtor as to his property
- 42 Attachment in case of decree for rent or mesne profits or other matter; amount of which to be subsequently determined
- 43 Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor
- 44 Attachment of agricultural produce
- 45 Provisions as to agricultural produce under attachment
- 46 Attachment of debt, share and other property not in possession of judgment-debtor
- 47 Attachment of share in moveables
- 48 Attachment of salary or allowances of public officer or servant of railway company or local authority
- 49 Attachment of partnership property

RULES.

- 50 Execution of decree against firm
- 51 Attachment of negotiable instruments
- 52 Attachment of property in custody of Court or public officer
- 53 Attachment of decrees
- 54 Attachment of immoveable property
- 55 Removal of attachment after satisfaction of decree.
- 56 Order for payment of coin or currency notes to party entitled under decree
- 57 Determination of attachment

Investigation of claims and objections

- 58 Investigation of claims to, and objections to attachment of, attached property

Postponement of sale

- 59 Evidence to be adduced by claimant
- 60 Release of property from attachment
- 61 Disallowance of claim to property attached
- 62 Continuance of attachment subject to claim of incumbrancer
- 63 Saving of suits to establish right to attached property

Sale generally

- 64 Power to order property attached to be sold and proceeds to be paid to person entitled
- 65 Sales by whom conducted and how made
- 66 Proclamation of sales by public auction
- 67 Mode of making proclamation
- 68 Time of sale
- 69 Adjournment or stoppage of sale
- 70 Saving of certain sales
- 71 Defaulting purchaser answerable for loss on re sale
- 72 Decree-holder not to bid for or buy property without permission

Where decree-holder purchases, amount of decree may be taken as payment

- 73 Restriction on bidding or purchase by officers

Sale of moveable property

*Sale of moveable property***RULES**

- 74 Sale of agricultural produce
- 75 Special provisions relating to growing crops
- 76 Negotiable instruments and shares in corporations
- 77 Sale by public auction
- 78 Irregularity not to vitiate sale, but any person injured may sue
- 79 Delivery of moveable property, debts and shares
- 80 Transfer of negotiable instruments and shares
- 81 Vesting order in case of other property

Sale of immoveable property

- 82 What Courts may order sales
- 83 Postponement of sale to enable judgment-debtor to raise amount of decree
- 84 Deposit by purchaser and re-sale on default
- 85 Time for payment in full of purchase-money
- 86 Procedure in default of payment
- 87 Notification on re-sale
- 88 Bid of co-sharer to have preference
- 89 Application to set aside sale on deposit
- 90 Application to set aside sale on ground of irregularity or fraud
- 91 Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest
- 92 Sale when to become absolute or be set aside
- 93 Return of purchase-money in certain cases
- 94 Certificate to purchaser
- 95 Delivery of property in occupancy of judgment-debtor
- 96 Delivery of property in occupancy of tenant

Resistance to delivery of possession to decree-holder or purchaser

- 97 Resistance or obstruction to possession of immoveable property
- 98 Resistance or obstruction by judgment-debtor

99 Resistance

RULES

- 99 Resistance or obstruction by *bond fide* claimant
- 100 Dispossession by decree-holder or purchaser
- 101 *Bond fide* claimant to be restored to possession
- 102 Rules not applicable to transferee *lite pendente*
- 103 Orders conclusive subject to regular suit

 ORDER XXII
Death, Marriage and Insolvency of Parties

- 1 No abatement by party's death, if right to sue survives
- 2 Procedure where one of several plaintiffs or defendants dies and right to sue survives
- 3 Procedure in case of death of one of several plaintiffs or of sole plaintiff
- 4 Procedure in case of death of one of several defendants or of sole defendant
- 5 Determination of question as to legal representative
- 6 No abatement by reason of death after hearing
- 7 Suit not abated by marriage of female party
- 8 When plaintiff's insolvency bars suit
Procedure where assignee fails to continue suit or give security
- 9 Effect of abatement or dismissal
- 10 Procedure in case of assignment before final order in suit
- 11 Application of Order to appeals
- 12 Application of Order to proceedings

 ORDER XXIII
Withdrawal and Adjustment of Suits

- 1 Withdrawal of suit or abandonment of part of claim
- 2 Limitation law not affected by first suit
- 3 Compromise of suit
- 4 Proceedings in execution of decrees not affected

ORDER XXIV.

ORDER XXIV

Payment into Court

RULES

- 1 Deposit by defendant of amount in satisfaction of claim
- 2 Notice of deposit
- 3 Interest on deposit not allowed to plaintiff after notice
- 4 Procedure where plaintiff accepts deposit as satisfaction in part
Procedure where he accepts it as satisfaction in full

ORDER XXV

Security for Costs

- 1 When security for costs may be required from plaintiff
Residence out of British India
- 2 Effect of failure to furnish security

ORDER XXVI

Commissions

Commissions to examine witnesses

- 1 Cases in which Court may issue commission to examine witness
- 2 Order for commission
- 3 Where witness resides within Court's jurisdiction
- 4 Persons for whose examination commission may issue
- 5 Commission on Request to examine witness not within British India
- 6 Court to examine witness pursuant to commission
- 7 Return of commission with depositions of witnesses
- 8 When depositions may be read in evidence

Commissions for local investigations

- 9 Commissions to make local investigations
- 10 Procedure of Commissioner
Report and depositions to be evidence in suit
Commissioner may be examined in person

11 Commission

Commissions to examine accounts

RULES

- 11 Commission to examine or adjust accounts
- 12 Court to give Commissioner necessary instructions
Proceedings and report to be evidence
Court may direct further inquiry

Commissions to make partitions

- 13 Commission to make partition of immoveable property
- 14 Procedure of Commissioner

General provisions

- 15 Expenses of commission to be paid into Court
- 16 Powers of Commissioners
- 17 Attendance and examination of witnesses before Commissioner
- 18 Parties to appear before Commissioner

Commissions issued at the instance of Foreign Tribunals

- 19 Cases in which High Court may issue commission to examine witness
- 20 Application for issue of commission
- 21 To whom commission may be issued
- 22 Issue, execution and return of commissions and transmission of evidence to foreign Court

ORDER XXVII

*Suits by or against the Crown or Public Officers in their
official capacity*

- 1 Suits by or against the Crown
- 2 Persons authorized to act for the Crown
- 3 Plants in suits by or against the Crown
- 4 Agent for the Crown to receive process
- 5 Fixing of day for appearance on behalf of the Crown
- 6 Attendance of person able to answer questions relating to suit against Crown

7 Extension

RULES

- 7 Extension of the time to enable public officer to make reference to Crown
- 8 Procedure in suits against public officer
- 8A No security to be required from Crown on a public officer in certain cases
- 8B Definitions of "Crown" and "Crown pleader"

ORDER XXVIII

Suits by or against Military or Naval Men or Airmen

- 1 Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them
- 2 Person so authorized may act personally or appoint pleader
- 3 Service on person so authorized, or on his pleader, to be good service

ORDER XXIX

Suits by or against Corporations

- 1 Subscription and verification of pleading
- 2 Service on corporation
- 3 Power to require personal attendance of officer of corporation

ORDER XXX

Suits by or against Firms and Persons carrying on business in names other than their own

- 1 Suing of partners in name of firm
- 2 Disclosure of partners' names
- 3 Service
- 4 Right of suit on death of partner
- 5 Notice in what capacity served
- 6 Appearance of partners
- 7 No appearance except by partners

RULES

- 8 Appearance under protest
- 9 Suits between co-partners
- 10 Suit against person carrying on business in name other than his own

ORDER XXXI

Suits by or against Trustees, Executors and Administrators

- 1 Representation of beneficiaries in suits concerning property vested in trustees, etc
- 2 Joinder of trustees, executors and administrators
- 3 Husband of married executrix not to join

ORDER XXXII

Suits by or against Minors and Persons of Unsound Mind

- 1 Minor to sue by next friend
- 2 Where suit is instituted without next friend, plaint to be taken off the file
- 3 Guardian for the suit to be appointed by Court for minor defendant
- 4 Who may act as next friend or be appointed guardian for the suit
- 5 Representation of minor by next friend or guardian for the suit
- 6 Receipt by next friend or guardian for the suit of property under decree for minor
- 7 Agreement or compromise by next friend or guardian for the suit
- 8 Retirement of next friend
- 9 Removal of next friend
- 10 Stay of proceedings on removal, etc , of next friend
- 11 Retirement, removal or death of guardian for the suit

RULES

- 12 Course to be followed by minor plaintiff or applicant on attaining majority
- 13 Where minor co-plaintiff attaining majority desires to repudiate suit
- 14 Unreasonable or improper suit
- 15 Application of rules to persons of unsound mind
- 16 Saving for Princes and Chiefs

 ORDER XXXIII
Suits by Paupers

- 1 Suits may be instituted *in formâ pauperis*
- 2 Contents of application
- 3 Presentation of application
- 4 Examination of applicant
If presented by agent, Court may order applicant to be examined by commission
- 5 Rejection of application
- 6 Notice of day for receiving evidence of applicant's pauperism
- 7 Procedure at hearing
- 8 Procedure if application admitted
- 9 Dispaupering
- 10 Costs where pauper succeeds
- 11 Procedure where pauper fails
- 12 Provincial Government may apply for payment of court-fees
- 13 Provincial Government to be deemed a party
- 14 Copy of decree to be sent to Collector
- 15 Refusal to allow applicant to sue as pauper to bar subsequent application of like nature
- 16 Costs

ORDER XXXIV.

ORDER XXXIV

Suits relating to Mortgages of Immoveable Property

RULES

- 1 Parties to suits for foreclosure, sale and redemption
- 2 Preliminary decree in foreclosure suit
- 3 Final decree in foreclosure suit
- 4 Preliminary decree in suit for sale
Power to decree sale in foreclosure suit
- 5 Final decree in suit for sale
- 6 Recovery of balance due on mortgage in suit for sale
- 7 Preliminary decree in redemption-suit
- 8 Final decree in redemption suit
- 8A Recovery of balance due on mortgage in suit for redemption

- 9 Decree where nothing is found due or where mortgagee has been overpaid

- 10 Costs of mortgagee subsequent to decree
- 11 Payment of interest
- 12 Sale of property subject to prior mortgage
- 13 Application of proceeds
- 14 Suit for sale necessary for bringing mortgaged property to sale
- 15 Mortgages by the deposit of title-deeds and charges

ORDER XXXV

Interpleader

- 1 Plant in interpleader-suits
- 2 Payment of thing claimed into Court
- 3 Procedure where defendant is suing plaintiff
- 4 Procedure at first hearing
- 5 Agents and tenants may not institute interpleader-suits
- 6 Charge for plaintiff's costs

ORDER XXXVI

ORDER XXXVI

Special Case

RULES

- 1 Power to state case for Court's opinion
- 2 Where value of subject-matter must be stated
- 3 Agreement to be filed and registered as suit
- 4 Parties to be subject to Court's jurisdiction
- 5 Hearing and disposal of case

ORDER XXXVII

Summary Procedure on Negotiable Instruments

- 1 Application of Order
- 2 Institution of summary suits upon bills of exchange, etc
- 3 Defendant showing defence on merits to have leave to appear,
- 4 Power to set aside decree
- 5 Power to order bill, etc , to be deposited with officer of Court
- 6 Recovery of cost of noting non-acceptance of dishonoured bill or note
- 7 Procedure in suits

ORDER XXXVIII

Arrest and Attachment before judgment

Arrest before judgment

- 1 Where defendant may be called upon to furnish security for appearance
- 2 Security
- 3 Procedure on application by surety to be discharged
- 4 Procedure where defendant fails to furnish security or find fresh security

Attachment

Attachment before judgment

RULES -

- 5 Where defendant may be called upon to furnish security for production of property
- 6 Attachment where cause not shown or security not furnished
- 7 Mode of making attachment
- 8 Investigation of claim to property attached before judgment
- 9 Removal of attachment when security furnished or suit dismissed
- 10 Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale
- 11 Property attached before judgment not to be re-attached in execution of decree
- 12 Agricultural produce not attachable before judgment
- 13 Small Cause Court not to attach immoveable property.

 ORDER XXXIX
*Temporary Injunctions and Interlocutory Orders**Temporary injunctions*

- 1 Cases in which temporary injunction may be granted
- 2 Injunction to restrain repetition or continuance of breach
- 3 Before granting injunction, Court to direct notice to opposite party
- 4 Order for injunction may be discharged, varied or set aside
- 5 Injunction to corporation binding on its officers

Interlocutory orders

- 6 Power to order interim sale
- 7 Detention, preservation, inspection, etc., of subject-matter of suit
- 8 Application for such orders to be after notice

9 When

RULES

- 9 When party may be put in immediate possession of land the subject-matter of suit
- 10 Deposit of money, etc , in Court

 ORDER XL
Appointment of Receivers

- 1 Appointment of receivers
- 2 Remuneration
- 3 Duties
- 4 Enforcement of receiver's duties
- 5 When Collector may be appointed receiver

 ORDER XLI
Appeals from Original Decrees

- 1 Form of appeal
 - What to accompany memorandum
 - Contents of memorandum
- 2 Grounds which may be taken in appeal
- 3 Rejection or amendment of memorandum
- 4 One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all
 - Stay of proceedings and of execution*
- 5 Stay by Appellate Court
 - Stay by Court which passed the decree
- 6 Security in case of order for execution of decree appealed from
- 7 *Omitted*
- 8 Exercise of powers in appeal from order made in execution of decree

Procedure on admission of appeal

- 9 Registry or memorandum of appeal
 - Register of appeals

RULES

- 10 Appellate Court may require appellant to furnish security for costs
Where appellant resides out of British India
- 11 Power to dismiss appeal without sending notice to Lower Court
- 12 Day for hearing appeal
- 13 Appellate Court to give notice to Court whose decree appealed from
Transmission of papers to Appellate Court
Copies of exhibits in Court whose decree appealed from
- 14 Publication and service of notice of day for hearing appeal
Appellate Court may itself cause notice to be served.
- 15 Contents of notice

Procedure on hearing

- 16 Right to begin
- 17 Dismissal of appeal for appellant's default
Hearing appeal *ex parte*
- 18 Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs
- 19 Re-admission of appeal dismissed for default
- 20 Power to adjourn hearing, and direct persons appearing interested to be made respondents
- 21 Re-hearing on application of respondent against whom *ex parte* decree made
- 22 Upon hearing, respondent may object to decree as if he had preferred separate appeal
Form of objection and provisions applicable thereto
- 23 Remand of case by Appellate Court
- 24 Where evidence on record sufficient, Appellate Court may determine case finally
- 25 Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from
- 26 Findings and evidence to be put on record
Objections to finding
Determination of appeal

27 Production

RULES

- 27 Production of additional evidence in Appellate Court
- 28 Mode of taking additional evidence
- 29 Points to be defined and recorded

Judgment in appeal

- 30 Judgment when and where pronounced
- 31 Contents, date and signature of judgment
- 32 What judgment may direct
- 33 Power of Court of Appeal
- 34 Dissent to be recorded

Decree in appeal

- 35 Date and contents of decree
Judge dissenting from judgment need not sign decree
- 36 Copies of judgment and decree to be furnished to parties
- 37 Certified copy of decree to be sent to Court whose decree appealed from

ORDER XLII

Appeals from Appellate Decrees

- 1 Procedure

ORDER XLIII

Appeals from Orders

- 1 Appeals from orders
- 2 Procedure

ORDER XLIV

Pauper Appeals

- 1 Who may appeal as pauper
Procedure on application for admission of appeal
- 2 Inquiry into pauperism

ORDER XLV

ORDER XLV
Appeals to the King in Council

RULES

- 1 "Decree" defined
- 2 Application to Court whose decree complained of
- 3 Certificate as to value or fitness
- 4 Consolidation of suits
- 5 Remission of dispute to Court of first instance
- 6 Effect of refusal of certificate
- 7 Security and deposit required on grant of certificate
- 8 Admission of appeal and procedure thereon
- 9 Revocation of acceptance of security
- 9A Power to dispense with notices in case of deceased parties
- 10 Power to order further security or payment
- 11 Effect of failure to comply with order
- 12 Refund of balance deposit
- 13 Powers of Court pending appeal
- 14 Increase of security found inadequate
- 15 Procedure to enforce orders of King in Council
- 16 Appeal from order relating to execution
- 17 Appeals to Federal Court

ORDER XLVI

Reference

- 1 Reference of question to High Court
- 2 Court may pass decree contingent upon decision of High Court
- 3 Judgment of High Court to be transmitted, and case disposed of accordingly
- 4 Costs of reference to High Court
- 5 Power to alter, etc., decree of Court making reference

6 Power

RULES

- 6 Power to refer to High Court questions as to jurisdiction in small causes
- 7 Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes

ORDER XLVII

Review

- 1 Application for review of judgment
- 2 To whom applications for review may be made
- 3 Form of applications for review
- 4 Application where rejected
Application where granted
- 5 Application for review in Court consisting of two or more Judges
- 6 Application where rejected
- 7 Order of rejection not appealable
Objections to order granting application
- 8 Registry of application granted, and order for re-hearing
- 9 Bar of certain applications

ORDER XLVIII

Miscellaneous

- 1 Process to be served at expense of party issuing
Costs of service
- 2 Orders and notices how served
- 3 Use of forms in appendices

ORDER XLIX

ORDER XLIX

Chartered High Courts

RULES

- 1 Who may serve processes of High Courts
- 2 Saving in respect of Chartered High Courts
- 3 Application of rules

ORDER L

Provincial Small Cause Courts

- 1 Provincial Small Cause Courts

ORDER LI

Presidency Small Cause Courts

- 1 Presidency Small Cause Courts

APPENDICES TO THE FIRST SCHEDULE

FORMS

A —PLEADINGS

- 1 Titles of suits
- 2 Description of parties in particular cases
- 3 Plaints
- 4 Written statements

B —PROCESS

C —DISCOVERY, INSPECTION AND ADMISSION

D —DECREES

E —EXECUTION

F —SUPPLEMENTAL PROCEEDINGS

G —APPEAL, REFERENCE AND REVIEW

H —MISCELLANEOUS

THE FIRST SCHEDULE.

RULES

- 6 Power to refer to High Court questions as to jurisdiction in small causes
- 7 Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes

ORDER XLVII

Review

- 1 Application for review of judgment
- 2 To whom applications for review may be made.
- 3 Form of applications for review
- 4 Application where rejected
Application where granted
- 5 Application for review in Court consisting of two or more Judges
- 6 Application where rejected
- 7 Order of rejection not appealable
Objections to order granting application
- 8 Registry of application granted, and order for re-hearing
- 9 Bar of certain applications

ORDER XLVIII

Miscellaneous

- 1 Process to be served at expense of party issuing
Costs of service
- 2 Orders and notices how served
- 3 Use of forms in appendices

ORDER XLIX.

ORDER XLIX

Chartered High Courts

RULES

- 1 Who may serve processes of High Courts
- 2 Saving in respect of Chartered High Courts
- 3 Application of rules

ORDER L

Provincial Small Cause Courts

- 1 Provincial Small Cause Courts

ORDER LI

Presidency Small Cause Courts

- 1 Presidency Small Cause Courts

APPENDICES TO THE FIRST SCHEDULE

FORMS

A —PLEADINGS

- 1 Titles of suits
- 2 Description of parties in particular cases
- 3 Plaints
- 4 Written statements

B —PROCESS

C —DISCOVERY, INSPECTION AND ADMISSION

D —DECREES

E —EXECUTION

F —SUPPLEMENTAL PROCEEDINGS

G —APPEAL, REFERENCE AND REVIEW

H —MISCELLANEOUS

THE FIRST SCHEDULE.

(The First Schedule Order I—Parties to Suits)

THE FIRST SCHEDULE.

ORDER I

Parties to Suits

Who may be
joined as
plaintiffs

1 All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise

Power of
Court to order
separate
trials

2 Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient

Who may be
joined as
defendants,

3 All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise

Court may
give judgment
for or against
one or more of
joint parties,

4 Judgment may be given without any amendment—

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to,

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities

Defendant
need not be
interested in
all the relief
claimed

5 It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Joinder of
parties liable
on same
contract

6 The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes

When plaintiff
in doubt from
whom redress
is to be
sought.

7 Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants

(The First Schedule Order I—Parties to Suits)

defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties

8 (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

One person may sue or defend on behalf of all in same interest

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit

9 No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it

Misjoinder and nonjoinder

10 (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just

Suit in name of wrong Plaintiff

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added

Court may strike out or add parties

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent

(4) Where

(The First Schedule Order I—Parties to Suits Order II—
Frame of Suit)

Where defendant added, plaintiff to be amended

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the ¹Indian Limitation Act, 1877, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons XV of 1877.

Conduct of suit

11 The Court may give the conduct of the suit to such person as it deems proper

Appearance of one of several plaintiffs or defendants for others

12 (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court

Objections as to nonjoinder or misjoinder

13 All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived

ORDER II

Frame of Suit

Frame of suit

1 Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them

Suit to include the whole claim

2 (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his
claim

¹ See now the Indian Limitation Act, 1908 (9 of 1908), s 22

(The First Schedule Order II —Frame of Suit)

claim in order to bring the suit within the jurisdiction of any Court

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished Relinquishment of part of claim

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs he shall not afterwards sue for any relief so omitted Omission to sue for one of several reliefs

Explanation —For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action

Illustration

A lets a house to B at a yearly rent of Rs 1,200 The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid A sues B in 1908 only for the rent due for 1906 A shall not afterwards sue B for the rent due for 1905 or 1907

3 (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit Joinder of causes of action

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit

4 No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except— Only certain claims to be joined for recovery of immoveable property

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof,
- (b) claims for damages for breach of any contract under which the property or any part thereof is held, and
- (c) claims in which the relief sought is based on the same cause of action

Provided

(The First Schedule Order II—Frame of Suit Order III
—Recognized Agents and Pleadings)

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property

Claims by or against executor, administrator or heir

5 No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents

Power of Court to order separate trials

6 Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient

Objections as to misjoinder

7 All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived

ORDER III

Recognized Agents and Pleadings

Appearances, etc., may be in person, by recognized agent or by pleader

1 Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader¹ [appearing, applying or acting, as the case may be,] on his behalf

Provided that any such appearance shall, if the Court so directs, be made by the party in person

Recognized agents

2 The recognized agents of parties by whom such appearances, applications and acts may be made, or done are—

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties,

(b) persons

¹These words were substituted for the words "duly appointed to act" by s 2 of the Code of Civil Procedure (Second Amendment) Act, 1926 (22 of 1926)

(The First Schedule Order III—Recognized Agents and Pleaders)

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts

3 (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs

Service of process on recognized agent

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent

¹[4 (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment

Appointment of pleader

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client

(3) For the purposes of sub-rule (2) an application for review of judgment, an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit shall be deemed to be proceedings in the suit

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader

¹ This rule was substituted by s 2 of the Code of Civil Procedure (Second Amendment) Act, 1926 (22 of 1926)

(The First Schedule Order III—Recognized Agents and Pleadings Order IV—Institution of Suits)

pleader shall be attested by such person and in such manner as may be specified by the order

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating—

- (a) the names of the parties to the suit,
- (b) the name of the party for whom he appears, and
- (c) the name of the person by whom he is authorised to appear

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party]

Service of process on pleader

5 Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person

Agent to accept service

6 (1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process

Appointment to be in writing and to be filed in Court

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court

ORDER IV

Institution of Suits

Suit to be commenced by plaintiff

1 (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable

(The First Schedule Order IV—Institution of Suits Order
V—Issue and Service of Summons)

2 The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits ^{Register of suits} Such entries shall be numbered in every year according to the order in which the plants are admitted

ORDER V

Issue and Service of Summons

Issue of Summons

1 (1) When a suit has been duly instituted a summons ^{summons} may be issued to the defendant to appear and answer the claim on a day to be therein specified

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plant and admitted the plaintiff's claim

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some person able to answer all such questions

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court

2 Every summons shall be accompanied by a copy of the plant or, if so permitted, by a concise statement ^{Copy or statement annexed to summons}

3 (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified ^{Court may order defendant or plaintiff to appear in person}

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance

(The First Schedule Order V—Issue and Service of Summons)

No party to be ordered to appear in person unless resident within certain limits

4 No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house

Summons to be either to settle issues or for final disposal

5 The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit, and the summons shall contain a direction accordingly

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit

Fixing day for appearance of defendant

6 The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons, and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day

Summons to order defendant to produce documents relied on by him
On issue of summons for final disposal defendant to be directed to produce his witnesses

7 The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case

8 Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case

Service of Summons

Delivery or transmission of summons for service

9 (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates

(2) The

(The First Schedule Order V—Issue and Service of Summons)

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct

10 Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court

Mode of service

11 Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant

Service on several defendants

12 Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient

Service to be on defendant in person when practicable, or on his agent

13 (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service

Service on agent by whom defendant carries on business

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer

14 Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Service on agent in charge in suits for immoveable property

15 Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him

Where service may be on male member of defendant's family

Explanation—A servant is not a member of the family within the meaning of this rule

16 Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to

Person served to sign acknowledgment.

(The First Schedule Order V—Issue and Service of Summons)

an acknowledgment of service endorsed on the original summons

Procedure when defendant refuses to accept service, or cannot be found

17 Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed

Endorsement of time and manner of service

18 The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons

Examination of serving officer

19 Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit

Substituted service

20 (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the

defendant

(The First Schedule Order V —Issue and Service of Summons)

defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally Effect of substituted service

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require Where service substituted, time for appearance to be fixed

21 A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides Service of summons where defendant resides within jurisdiction of another Court

22 Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras ¹[and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served Service, with Presidency-towns, of summons issued by Courts outside

23 The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto Duty of Court to which summons is sent

24 Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant Service on defendant in prison

25 Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate Service where defendant resides out of British India and has no agent

26 Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in ²[the Central Government or the Crown Service in foreign territory through Political Agent or Court

¹ These words were substituted for the words "Bombay and Rangoon" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "the Governor General in Council", *ibid*

(The First Schedule Order V—Issue and Service of Summons)

Crown Representative], a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

¹[(b) ²[the Provincial Government] has, by notification in the ³[official Gazette], declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons ⁴[issued under this Code by a Court of the Province] shall be deemed to be valid service,]

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant, and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service

Service on civil public officer or on servant of railway company or local authority

27 Where the defendant is a public officer (not belonging to His Majesty's military ⁵[naval or air] forces ⁶* * * *), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant

28 Where

¹ This sub rule was substituted by s 2 and Sch I of the second Repealing and Amending Act, 1914 (17 of 1914)

² These words were substituted for the words "the Governor General-in Council" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

³ These words were substituted for the words "Gazette of India" by para. 4, *ibid*

⁴ These words were substituted for the words "issued by a Court under this Code" by para 3 and Sch I, *ibid*

⁵ These words were substituted for the word "or naval" by s 2 and Sch I of the Repealing and Amending Act, 1927 (10 of 1927)

⁶ The words "or His Majesty's Indian Marine Service" were omitted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

(The First Schedule Order V—Issue and Service of Summons Order VI—Pleadings generally)

28 Where the defendant is a soldier, ¹[sailor] ²[or airman], Service on soldiers, sailors, or airmen the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant

29 (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service

Duty of person to whom summons be delivered or sent for service

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service

30 (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration

Substitution of letter for summons

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit, and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent

ORDER VI

Pleadings generally

1 "Pleading" shall mean plaint or written statement Pleading

2 Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading pleading to state material facts and not evidence

¹ This word was inserted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

² These words were inserted by s 2 and Sch I of the Repealing and Amending Act 1927 (10 of 1927)

(The First Schedule Order VI—Pleadings generally)

pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures

Forms of pleading

3 The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings

Particulars to be given where necessary

4 In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading

Further and better statement, or particulars

5 A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just

Condition precedent

6 Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading

Departure

7 No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same

Denial of contract

8 Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract

Effect of document to be stated

9 Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material

10 Wherever

(The First Schedule Order VI—Pleadings generally)

10 Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred Malice,
knowledge,
etc

11 Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material Notice

12 Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative Implied
contract, or
relation

13 Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (*e g*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim) Presumptions
of law

14 Every pleading shall be signed by the party and his pleader (if any). Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf Pleading to be
signed

15 (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case Verification of
pleadings

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true

(3) The

(The First Schedule Order VI—Pleadings generally
Order VII—Plaint)

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed

Striking out pleadings

16 The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit

Amendment of pleadings

17 The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties

Failure to amend after orders

18 If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days as the case may be, unless the time is extended by the Court

ORDER VII

Plaint

Particulars to be contained in plaint

1 The plaint shall contain the following particulars —

- (a) the name of the Court in which the suit is brought,
- (b) the name, description and place of residence of the plaintiff
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained,
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect,
- (e) the facts constituting the cause of action and when it arose,
- (f) the facts showing that the Court has jurisdiction,
- (g) the relief which the plaintiff claims,
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim the amount so allowed or relinquished, and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees so far as the case admits

(The First Schedule Order VII—Plaint)

2 Where the plaintiff seeks the recovery of money, the plaintiff shall state the precise amount claimed Money suits

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaintiff shall state approximately the amount sued for

3 Where the subject-matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaintiff shall specify such boundaries or numbers Where the subject-matter of the suit is immovable property

4 Where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it When plaintiff sues as representative

5 The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand Defendant's interest and liability to be shown

6 Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed Grounds of exemption from limitation law

7 Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement Relief to be specifically stated

8 Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly Relief founded on separate grounds

9 (1) The plaintiff shall endorse on the plaintiff, or annex thereto, a list of the documents (if any) which he has produced along with it, and, if the plaintiff is admitted, shall present as many copies on plain paper of the plaintiff as there are defendants, unless the Court by reason of the length of Procedure of admitting plaintiff

the

(The First Schedule Order VII —Plaint)

Concise
statement

the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct

Return of
plaint

10 (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted

Procedure on
returning
plaint.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for return-cause of action'

Rejection of
plaint

11 The plaint shall be rejected in the following cases —

- (a) where it does not disclose a cause of action
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so
- (d) where the suit appears from the statement in the plaint to be barred by any law

Procedure on
rejecting
plaint

12 Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order

Where
rejection of
plaint does
not preclude
presentation
of fresh
plaint

13 The rejection of the plaint on any of the grounds herebefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action

(The First Schedule Order VII—Plaint)

Documents relied on in plaint

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint

Production of document on which plaintiff sues

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint

List of other documents

15 Where any such document is, not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is

Statement in case of documents not in plaintiff's possession or power

16 Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint

Suits on lost negotiable instruments

VIII of 1891, 17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies

Production of shop-book

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed

Original entry to be marked and returned

18 (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit

Inadmissibility of document not produced when plaint filed

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory

ORDER VIII.

(The First Schedule Order VIII —Written Statement and Set-off)

ORDER VIII

Written Statement and Set-off

Written statement

1 The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence

New facts must be specially pleaded

2 The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality

Denial to be specific

3 It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages

Evasive denial

4 Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances

Specific denial

5 Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission

Particulars of set-off to be given in written statement

6 (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as

they

(The First Schedule Order VIII—Written Statement and Set-off)

they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by, the Court, present a written statement containing the particulars of the debt sought to be set-off

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree Effect of set-off

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off

Illustrations

(a) A bequeaths Rs 2,000 to B and appoints C his executor and residuary legatee B dies and D takes out administration to B's effects C pays Rs 1,000 as surety for D, then D sues C for the legacy C cannot set off the debt of Rs 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs 1,000

(b) A dies intestate and in debt to B C takes out administration to A's effects and B buys part of the effects from C In a suit for the purchase money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A

(c) A sues B on a bill of exchange B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off The amount not being ascertained cannot be set-off

(d) A sues B on a bill of exchange for Rs 500 B holds a judgment against A for Rs 1,000 The two claims being both definite pecuniary demands may be set off

(e) A sues B for compensation on account of trespass B holds a promissory note for Rs 1,000 from A and claims to set off that amount against any sum that A may recover in the suit B may do so, for, as soon as A recovers, both sums are definite pecuniary demands

(f) A and B sue C for Rs 1,000 C cannot set off a debt due to him by A alone

(g) A sues B and C for Rs 1,000 B cannot set off a debt due to him alone by A

(h) A owes the partnership firm of B and C Rs 1,000 B dies, leaving C surviving A sues C for a debt of Rs 1,500 due in his separate character C may set off the debt of Rs 1,000

7 Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly Defence or set-off founded on separate grounds

(The First Schedule Order VIII—Written Statement and Set-off Order IX—Appearance of Parties and Consequence of Non-appearance)

New ground of defence

8 Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement

Subsequent Pleadings

9 No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same

Procedure when party fails to present written statement called for by Court

10 Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit

ORDER IX

Appearance of Parties and Consequence of Non-appearance

Parties to appear on day fixed in summons for defendant to appear and answer

1 On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs

2 Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent

Where neither party appears, suit to be dismissed

3 Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed

Plaintiff may bring fresh suit or Court may restore suit to file

4 Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside,

(The First Schedule Order IX—Appearance of Parties and Consequence of Non-appearance)

and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit

5 ¹[(1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons.

- (a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or
- (b) such defendant is avoiding service of process, or
- (c) there is any other sufficient cause for extending the time,

in which case the Court may extend the time for making such application for such period as it thinks fit]

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit

6 (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

Procedure when only plaintiff appears
When summons duly served.
When summons no duly served.
When summons served, but not in due time

- (a) if it is proved that the summons was duly served, the Court may proceed *ex parte*,
- (b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant,
- (c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing

of

¹ This sub rule was substituted by s 2 of the Code of Civil Procedure Amendment) Act, 1920 (24 of 1920)

(The First Schedule Order IX—Appearance of Parties and
Consequence of Non-appearance)

of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance

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

Procedure where defendant only appears

8 Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder

Decree against plaintiff by default bars fresh suit

9 (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party

Procedure in case of non-attendance of one or more of several plaintiffs

10 Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit

Procedure in case of non-attendance of one or more of several defendants

11 Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment,

(The First Schedule Order IX—Appearance of Parties and
Consequence of Non-appearance Order X—Examination
of Parties by the Court)

judgment, make such order as it thinks fit with respect to the defendants who do not appear

12 Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear

Consequence of non attendance, without sufficient cause shown, of party ordered to appear in person

Setting aside Decrees ex parte

13 In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside, and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

Setting aside decree *ex parte* against defendant

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also

14 No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party

No decree to be set aside without notice to opposite party

ORDER X

Examination of Parties by the Court

1 At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made The Court shall record such admissions and denials

Ascertainment whether allegations in pleadings are admitted or denied

(The First Schedule Order X—Examination of Parties by
the Court Order XI—Discovery and Inspection)

Oral examina-
tion of party,
or companion
of party

2 At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court, and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party

Substance of
examination
to be written

3 The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record

Consequence
of refusal or
inability of
pleader to
answer

4 (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit

ORDER XI

Discovery and Inspection

Discovery by
interrogatories

1 In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer. Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose. Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness

(The First Schedule Order XI—Discovery and Inspection)

2 On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs

Particular interrogatories to be submitted

3 In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault

Costs of interrogatories

4 Interrogatories shall be in Form No 2 in Appendix C, with such variations as circumstances may require

Form of interrogatories.

5 Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly

Corporations

6 Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bond fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer

Objections to interrogatories by answer

7 Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous, and any application for this purpose may be made within seven days after service of the interrogatories

Setting aside and striking out interrogatories.

8 Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow

Affidavit in answer filing

(The First Schedule Order XI—Discovery and Inspection)

Form of affidavit in answer

9 An affidavit in answer to interrogatories shall be in Form No 3 in Appendix C, with such variations as circumstances may require

No exception to be taken

10 No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit, objected to as insufficient shall be determined by the Court

Order to answer or answer further

11 Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *vivâ voce* examination, as the Court may direct

Application for discovery of documents

12 Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit. Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs

Affidavit of documents

13 The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No 5 in Appendix C, with such variations as circumstances may require

Production of documents

14 It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just

Inspection of documents referred to in pleadings or affidavits

15 Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce

such

(The First Schedule Order XI—Discovery and Inspection)

such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit

16 Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No 7 in Appendix C, with such variations as circumstances may require

Notice to
produce

17 The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in Form No 8 in Appendix C, with such variations as circumstances may require

Time for
inspection
when notice
given

18 (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desuing it, make an order for inspection in such place and in such manner as it may think fit. Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs

Order for
inspection

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon

ad

(The First Schedule Order XI—Discovery and Inspection)

an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs

Verified
copies

19 (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations. Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power, and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them

Premature
discovery

20 Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or

question

(*The First Schedule Order XI—Discovery and Inspection.
Order XII—Admissions*)

question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection order that such issue or question be determined first, and reserve the question as to the discovery or inspection

21 Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly

Non-compliance with order for discovery

22 Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in

Using answer to interrogatories at trial

23 This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability

Order to apply to minors

ORDER XII

Admissions

1 Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party

Notice of admission of case

2 Either party may call upon the other party to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may

Notice to admit document

be,

(The First Schedule Order XII—Admissions)

be, unless the Court otherwise directs, and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense

Form of
notice

3 A notice to admit documents shall be in Form No 9 in Appendix C with such variations as circumstances may require

Notice to
admit facts

4 Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice. Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just

Form of
admissions

5 A notice to admit facts shall be in Form No 10 in Appendix C, and admissions of facts shall be in Form No 11 in Appendix C, with such variations as circumstances may require

Judgment on
admissions

6 Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order, or give such judgment, as the Court may think just

Affidavit of
signature

7 An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required

8 Notice

(The First Schedule Order XII—Admissions Order XIII—
Production, Impounding and Return of Documents)

8 Notice to produce documents shall be in Form No 12 ^{Notice to produce documents} in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

9 If a notice to admit or produce specifies documents ^{Costs} which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XIII

Production, Impounding and Return of Documents

1 (1) The parties or their pleaders shall produce, at ^{Documentary evidence to be produced at first hearing} the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2 No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof, and the Court receiving any such evidence shall record the reasons for so doing. ^{Effect of non production of documents}

3 The Court may at any stage of the suit reject any ^{Rejection of irrelevant or inadmissible documents} document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4 (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has ^{Endorsements on documents admitted in evidence}

been

(The First Schedule Order XIII—Production, Impounding
and Return of Documents)

been admitted in evidence in the suit the following particulars, namely —

- (a) the number and title of the suit,
- (b) the name of the person producing the document
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted,

and the endorsement shall be signed or initialled by the Judge

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge

Endorsements
on copies of
admitted
entries in
books,
accounts and
records

5 (1) Save in so far as otherwise provided by the Bankers' Book's Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry XVIII of 1891

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it

(The First Schedule Order XIII—Production, Impounding and Return of Documents)

6 Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Endorsement on documents rejected as inadmissible in evidence

7 (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit

Recording of admitted and return of rejected documents

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them

8 Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit

Court may order any document to be impounded

9 (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

Return of admitted documents.

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless

(2) On

(The First Schedule Order XIII—Production, Impounding and Return of Documents Order XIV—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon)

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it

Court may send for papers from its own records or from other Courts

10 (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court the record of any other suit or proceeding, and inspect the same

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit

Provisions as to documents applied to material objects

11 The provisions herein contained as to documents shall, so far as may be, apply to all other material objects, producible as evidence

ORDER XIV

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon

Framing of issues

1 (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue

(4) Issues

(The First Schedule Order XIV—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon)

(4) Issues are of two kinds (a) issues of fact, (b) issues of law

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence

2 Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined

Issues of law and of fact

3 The Court may frame the issues from all or any of the following materials —

Materials - from which issues may be framed

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties,

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit,

(c) the contents of documents produced by either party

4 Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process

Court may examine witnesses or documents before framing issues.

5 (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms

Power to amend, and strike out, issues

(The First Schedule Order XIV—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon)

terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced

Questions of fact or law may by agreement be stated in form of issues

6 Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute

Court, if satisfied that agreement was executed in good faith, may pronounce judgment

7 Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court,

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement, and, upon the judgment so pronounced, a decree shall follow

(*Order XV — Disposal of the Suit at the first hearing*)

ORDER XV

Disposal of the Suit at the first hearing

1 Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment

Parties not at issue

2 Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants

One of several defendants not at issue

3 (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit

Parties at issue

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires

4 Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues

Failure to produce evidence.

(The First Schedule Order XVI—Summoning and Attendance of Witnesses)

ORDER XVI

Summoning and Attendance of Witnesses

Summons to attend to give evidence or produce documents

1 At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents

Expenses of witness to be paid into Court on applying for summons

2 (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance

Experts

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case

Scale of expenses

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf

Tender of expenses to witness

3 The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally

Procedure where insufficient sum paid in

4 (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons, or the Court may discharge the person summoned, without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid

(2) Where

(The First Schedule Order XVI—Summoning and Attendance of Witnesses)

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party, or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid

Expenses of witnesses detained more than one day

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

Time, place and purpose of attendance to be specified in summons

6 Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same

Summons to produce document

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

Power to require persons present in Court to give evidence or produce document

8 Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule

Summons how served

9 Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required

Time for serving summons

10 (1) Where

(The First Schedule Order XVI—Summoning and Attendance of Witnesses)

Procedure
where
witness fails
to comply
with summons

10 (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein, and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property

If witness
appears
attachment
may be
withdrawn

11 Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

- (a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,
- (b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

(The First Schedule Order XVI—Summoning and Attendance of Witnesses)

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit

12 The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any

Procedure if witness fails to appear

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment

13 The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor

Mode of attachment.

14 Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document

Court may of its own accord summon as witnesses strangers to suit

15 Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place

Duty of persons summoned to give evidence or produce documents

16 (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of

When they may depart

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the

Court

(The First Schedule Order XVI—Summoning and Attendance of Witnesses)

Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison

Application of rules 10 to 13

17 The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16

Procedure where witness apprehended cannot give evidence or produce document

18 Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison

No witness to be ordered to attend in person unless resident within certain limits

19. No one shall be ordered to attend in person to give evidence unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house

Consequence of refusal of party to give evidence when called on by Court

20 Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit

Rules as to witnesses to apply to parties summoned

21 Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable

ORDER XVII.

(The First Schedule, Order XVII—Adjournments Order XVIII—Hearing of the Suit and Examination of Witnesses)

ORDER XVII

Adjournments

1 (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit

Court may grant time and adjourn hearing

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment

Costs of adjournment

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded

2 Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit

Procedure if parties fail to appear on day fixed

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

Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII

Hearing of the Suit and Examination of Witnesses

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin

Right to begin

2. (1) On

(The First Schedule Order XVIII—Hearing of the Suit and Examination of Witnesses)

Statement
and production
of evidence

2 (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case

(3) The party beginning may then reply generally on the whole case

Evidence
where several
issues

3 Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party, and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning, but the party beginning will then be entitled to reply generally on the whole case

Witnesses to
be examined
in open
Court

4 The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge

How evidence
shall be taken
in appealable
cases

5 In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it

When
deposition to
be interpreted

6 Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given

(The First Schedule Order XVIII—Hearing of the Suit and Examination of Witnesses)

7 Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule

Evidence under section 138

8 Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record

Memorandum when evidence not taken down by Judge

9 Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down

When evidence may be taken in English

10 The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing

Any particular question and answer may be taken down.

11 Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon

Questions objected to and allowed by Court

12 The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination

Remarks on demeanour of witnesses

13 In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length, but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record

Memorandum of evidence in unappealable cases

14 (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of his inability

Judge unable to make such memorandum to record reasons of his inability

(The First Schedule Order XVIII—Hearing of the Suit and Examination of Witnesses)

of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court

(2) Every memorandum so made shall form part of the record

Power to deal with evidence taken before another Judge

15 (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24

Power to examine witness immediately

16 (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit

Court may recall and examine witness

17 The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit

Power of Court to inspect

18 The Court may at any stage of a suit inspect any property or thing concerning which any question may arise

(The First Schedule Order XIX—Affidavits. Order XX.—
Judgment and Decree)

ORDER XIX

Affidavits

1 Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable

Power to order any point to be proved by affidavit

Provided that where it appears to the Court that either party *bond fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit

2 (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent

Power to order attendance of deponent for cross-examination

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs

3 (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted provided that the grounds thereof are stated

Matters to which affidavits shall be confined

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX

Judgment and Decree

1 The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders

Judgment when pronounced

(The First Schedule Order XX—Judgment and Decree)

Power to pronounce judgment written by Judge or predecessor Judgment to be signed

2 A Judge may pronounce a judgment written but not pronounced by his predecessor

3 The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review

Judgments of Small Causes Courts

4 (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon

Judgments of other Courts

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision

Court to state its decision on each issue

5 In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit

Contents of decree

6 (1) The decree shall agree with the judgment, it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter

Date of decree.

7 The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree

Procedure where Judge has vacated office before signing decree

8 Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate

9 Where

(The First Schedule Order XX—Judgment and Decree)

9 Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers

Decree for recovery of immovable property

10 Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had

Decree for delivery of moveable property

11 (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable

Decree may direct payment by instalments

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit

Order, after decree, for payment by instalments.

12 (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

Decree for possession and mesne profits

- (a) for the possession of the property,
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits,
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
 - (i) the delivery of possession to the decree-holder,

(ii) the

(The First Schedule Order XX—Judgment and Decree)

(u) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(v) the expiration of three years from the date of the decree,

whichever event first occurs

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry

Decree in
administration
suit

13 (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent, and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code

Decree in pre-emption suit

14 (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any)

decreed

(The First Schedule Order XX—Judgment and Decree)

decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect, and,

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions

15 Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit

Decree in
suit for dis-
solution of
partnership.

16 In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit

Decree in
suit for
account
between
principal and
agent

17 The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is

Special
directions as
to accounts.

(The First Schedule Order XX—Judgment and Decree)

to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised

Decree in suit for partition of property or separate possession of a share therein

18 Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54,

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required

Decree when set-off is allowed

19 (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party

Appeal from decree relating to set-off

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise

Certified copies of judgment and decree to be furnished

20 Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense

ORDER XXI.

(The First Schedule Order XXI —Execution of Decrees and Orders)

ORDER XXI

Execution of Decrees and Orders

Payment under Decree

1 (1) All money payable under a decree shall be paid as follows, namely —

Modes of paying money under decree

- (a) into the Court whose duty it is to execute the decree,
- or
- (b) out of Court to the decree-holder, or
- (c) otherwise as the Court which made the decree directs

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly

Payment out of Court to decree holder

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree

Courts executing Decrees

3 Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure

Lands situate in more than one jurisdiction

4 Where

(The First Schedule Order XXI—Execution of Decrees and Orders)

Transfer to Court of Small Causes

4 Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, ¹[or Bombay], such Court may send to the Court of Small Causes in Calcutta, Madras, ¹[or Bombay] as the case may be, the copies and certificates mentioned in rule 6, and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself

Mode of transfer

5 Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed

Procedure where Court desires that its own decree shall be executed by another Court

6 The Court sending a decree for execution shall send—

- (a) a copy of the decree,
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied, and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect

Court receiving copies of decree, etc., to file same without proof.

7 The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof

8 Where

¹ These words were substituted for the words "Bombay or Rangoon" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XXI—Execution of Decrees and Orders)

8 Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction

Execution of decree or order by Court to which it is sent

9 Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction

Execution by High Court of decree transferred by other Court.

Application for execution

10 Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof

Application for execution.

11 (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court

Oral application

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely —

Written application

- (a) the number of the suit,
- (b) the names of the parties,
- (c) the date of the decree,
- (d) whether any appeal has been preferred from the decree,
- (e) whether any, (and if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree,

(f) whether

(The First Schedule Order XXI—Execution of Decrees and Orders)

- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results,
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed,
- (h) the amount of the costs (if any) awarded,
- (i) the name of the person against whom execution of the decree is sought, and
- (j) the mode in which the assistance of the Court is required, whether—
- (i) by the delivery of any property specifically decreed,
- (ii) by the attachment and sale, or by the sale without attachment, of any property,
- (iii) by the arrest and detention in prison of any person,
- (iv) by the appointment of a receiver,
- (v) otherwise, as the nature of the relief granted may require

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree

Application for attachment of moveable property not in judgment-debtor's possession.

12 Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same

Application for attachment of immoveable property to certain particulars

13 Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall contain at the foot—

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers, and

(b) a

(The First Schedule Order XXI—Execution of Decrees and Orders)

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same

14 Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors

Power to require certified extract from Collector's register in certain cases.

15 (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased

Application for execution by joint decree-holder.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application

16 Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder

Application for execution by transferee of decree

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others

(The First Schedule Order XXI—Execution of Decrees and Orders)

Procedure on receiving application for execution of decree

17 (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements or rules 11 to 14 as may be applicable to the case have been complied with, and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented

(3) Every amendment made under this rule shall be signed or initialled by the Judge

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Execution in case of cross-decrees

18 (1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(a) if the two sums are equal, satisfaction shall be entered upon both decrees, and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree for the smaller sum

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself

(3) This

(The First Schedule Order XXI—Execution of Decrees and Orders)

(3) This rule shall not be deemed to apply unless—

- (a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits, and
- (b) the sums due under the decrees are definite

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons

Illustrations

(a) A holds a decree against B for Rs 1,000 B holds a decree against A for the payment of Rs 1,000 in case A fails to deliver certain goods at a future day B cannot treat his decree as a cross decree under this rule

(b) A and B, co plaintiffs, obtain a decree for Rs 1,000 against C, and C obtains a decree for Rs 1,000 against B C cannot treat his decree as a cross decree under this rule

(c) A obtains a decree against B for Rs 1,000 C who is a trustee for B, obtains a decree on behalf of B against A for Rs 1,000 B cannot treat C's decree as a cross decree under this rule

(d) A, B, C, D and E are jointly and severally liable for Rs 1,000 under a decree obtained by F A obtains a decree for Rs 100 against F singly and applies for execution to the Court in which the joint decree is being executed F may treat his joint decree as a cross-decree under this rule

19 Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

Execution in case of cross-claims under same decree

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree, and,
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree

20 The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge

Cross-decrees and cross-claims in mortgage suits

21 The

(The First Schedule Order XXI —Execution of Decrees and Orders)

Simultaneous execution.

21 The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor

Notice to show cause against execution in certain cases

22 (1) Where an application for execution is made—

(a) more than one year after the date of the decree, or

(b) against the legal representative of a party to the decree ¹[or where an application is made for execution of a decree filed under the provisions of section 44A]

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice

Procedure after issue of notice

23 (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit

Process

¹ These words were added by s 3 of the Code of Civil Procedure (Amendment) Act, 1937 (8 of 1937)

(The First Schedule Order XXI—Execution of Decrees and Orders)

Process for Execution

24 (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree Process for execution.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed

(3) In every such process a day shall be specified on or before which it shall be executed

25 (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court Endorsement on process

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result

Stay of Execution

26 (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto When Court may stay execution.

(2) Where

The First Schedule Order XXI—Execution of Decrees and Orders)

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application

Power to require security from, or impose conditions upon, judgment-debtor

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit

Liability of judgment-debtor discharged

27 No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution

Order of Court which passed decree or of appellate Court to be binding upon Court applied to

28 Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution

Stay of execution pending suit between decree holder and judgment-debtor

29 Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided

Mode of execution

Decree for payment of money

30 Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both

Decree for specific moveable property

31 (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by

(The First Schedule Order XXI—Execution of Decrees and Orders)

the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease

32 (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced ¹[in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both

Decree for specific performance, for restitution of conjugal rights, or for an injunction,

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention

(3) Where

¹ These words were inserted by s 2 of the Code of Civil Procedure (Amendment) Act, 1923 (29 of 1923)

(The First Schedule Order XXI—Execution of Decrees and Orders)

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution proceedings

Discretion of Court in executing decrees for restitution of conjugal rights

33 (1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree ¹[against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree ²[shall be executed in the manner provided in this rule]

(2) Where

¹ These words were inserted by s 3 of the Code of Civil Procedure (Amendment) Act, 1923 (29 of 1923)

² These words were substituted for the words "shall not be executed by detention in prison", *ibid*

(The First Schedule Order XXI—Execution of Decrees and Orders)

(2) Where the Court has made an order under sub-rule (1) * * *, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money

34 (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court

Decree for execution of document, or endorsement of negotiable instrument

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force, and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered

(5) The

¹The words "and the decree holder is the wife" were omitted by 3 of the Code of Civil Procedure (Amendment) Act, 1923 (29 of 1923)

(The First Schedule Order XXI—Execution of Decrees and Orders)

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely —

“C D, Judge of the Court of

(or as the case may be), for A B, in a suit by E F against A B”,

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration

Decree for
immoveable
property

35 (1) Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property

(2) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and faculty to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession

Decree for
delivery of
immoveable
property
when in
occupancy of
tenant

36 Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the

property

(The First Schedule Order XXI—Execution of Decrees and Orders)

property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property

Arrest and detention in the civil prison

37 (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court ¹[shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison

Discretionary power to permit judgment-debtor to show cause against detention in prison

²[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor

38 Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the cost (if any) to which he is liable, be sooner paid

Warrant for arrest to direct judgment-debtor to be brought up

39 (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court

Subsistence-allowance

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where

no such

¹ This word was substituted for the word "may" by s 3 of the Code of Civil Procedure (Amendment) Act, 1936 (21 of 1936)

² This proviso was added, *ibid*

(The First Schedule Order XXI—Execution of Decrees and Orders)

no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest

¹[40 (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making

¹ This section was substituted by s 4 of the Code of Criminal Procedure (Amendment) Act, 1936 (21 of 1936) (This supersedes all modifications of the rule made under s 122 of the Code up to the 27th October 1936)

(The First Schedule Order XXI—Execution of Decrees and Orders)

making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied

(4) A judgment-debtor released under this rule may be re-arrested

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release]

Attachment of property

41 Where a decree is for the payment of money the decree-holder may apply to the Court for an order that— Examination of judgment-debtor as to his property.

- (a) the judgment-debtor, or
- (b) in the case of a corporation, any officer thereof. or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree. and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents

42 Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined

43 Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once

44 Where

(The First Schedule Order XXI—Execution of Decrees and Orders)

Attachment of agricultural produce.

44 Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

- (a) where such produce is a growing crop, on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain, and the produce shall thereupon be deemed to have passed into the possession of the Court

Provisions as to agricultural produce under attachment

45 (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it, and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil

(4) Where

(The First Schedule Order XXI—Execution of Decrees and Orders)

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered

46 (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, .

Attachment of debt, share and other property not in possession of judgment-debtor

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court,
- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon,
- (iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor

(2) A copy of such order shall be affixed on some conspicuous part of the court-house and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same

47 Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting

Attachment of share in moveables

him

(The First Schedule Order XXI—Execution of Decrees and Orders)

him from transferring the share or interest or charging it in any way

Attachment of salary or allowances of public officer or servant of railway company or local authority

48 (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct, and, upon notice of the order to such officer as ¹[the Central Government or the Provincial Government may by notification in their official Gazette] appoint ²[in this behalf,—

(a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be,

(b) where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court]

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by ³[the Central Government or the Provincial Government, as the case may be] in this behalf

shall

¹ These words were substituted for the original words by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the original words by s 2 of the Code of Civil Procedure (Amendment) Act, 1939 (26 of 1939)

³ These words were substituted for the words "the Government" by the Government of India (Adaptation of Indian Laws) Order 1937

(The First Schedule Order XXI—Execution of Decrees and Orders)

shall forthwith return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind ¹[the Central Government or the Provincial Government] or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of British India or local authority in British India, and ²[the Central Government or the Provincial Government] or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule

49 (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such Attachment of partnership property

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same

(4) Every

¹ These words were substituted for the words "the Government" by the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XXI—Execution of Decrees and Orders)

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within British India

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within British India

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served

Execution of
decree
against a
firm

50 (1) Where a decree has been passed against a firm, execution may be granted—

- (a) against any property of the partnership,
- (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner,
- (c) against any person who has been individually served as a partner with a summons and has failed to appear

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Indian Contract Act, 1872

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer

IX of 1872.

(The First Schedule Order XXI—Execution of Decrees and Orders)

51 Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court

Attachment of negotiable instruments

52 Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued

Attachment of property in custody of Court or public officer

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court

53 (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

Attachment of decrees

- (a) if the decrees were passed by the same Court, then by order of such Court, and
- (b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—
 - (i) the Court which passed the decree sought to be executed cancels the notice, or
 - (ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed

(The First Schedule Order XXI—Execution of Decrees and Orders)

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached prohibiting him from transferring or charging the same in any way, and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached, and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force

Attachment
of immoveable
property

54 (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate

(The First Schedule Order XXI—Execution of Decrees and Orders)

55 Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree is otherwise made through the Court or certified to the Court or
- (c) the decree is set aside or reversed,

Removal of attachment after satisfaction of decree

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule

56 Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same

Order for payment of coin or currency notes to party entitled under decree

57 Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date Upon the dismissal of such application the attachment shall cease

Determination of attachment.

Investigation of claims and objections

58 (1) Where any claim is preferred to, or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit

Investigation of claims to, and objection to attachment of, attached property

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed

(2) Where

(The First Schedule Order XXI—Execution of Decrees and Orders)

Postponement of sale

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection

Evidence to be adduced by claimant.

59 The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached

Release of property from attachment

60 Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment

Disallowance of claim to property attached

61 Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim

Continuance of attachment subject to claim of incumbrancer

62 Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge

Saying of suits to establish right to attached property

63 Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive

Sale generally

Power to order property attached to be sold and proceeds to be paid to person entitled

64 Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof

(The First Schedule Order XXI—Execution of Decrees and Orders)

thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same

65 Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed

Sales by whom conducted and how made

66 (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court

Proclamation of sales by public auction

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold,
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government,
- (c) any incumbrance to which the property is liable,
- (d) the amount for the recovery of which the sale is ordered, and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation

(4) For

(The First Schedule Order XXI—Execution of Decrees and Orders)

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto

Mode of
making
proclamation

67 (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2)

(2) Where the Court so directs, such proclamation shall also be published in the ¹[official Gazette] or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given

Time of sale

68 Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale

Adjournment
or stoppage
of sale

69 (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it

(3) Every

¹ These words were substituted for the words "local official Gazette" by para 4 of the Government of India (Adaptation of Indian Laws) Order 1937

(The First Schedule Order XXI—Execution of Decrees and Orders)

(2) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale

70 Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector Saving of certain sales.

71 Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money Defaulting purchaser answerable for loss on re-sale

72 (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property Decree holder not to bid for or buy property without permission

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly Where decree-holder purchases, amount of decree may be taken as payment

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale, and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder

73 No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold Restriction on bidding or purchase by officers

Sale

193

(The First Schedule Order XXI—Execution of Decrees and Orders)

*Sale of moveable property*Sale of
agricultural
produce

74 (1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or,
- (b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage

(2) Where, on the produce being put up for sale,—

- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce

Special
provisions
relating to
growing
crops

75 (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it

Negotiable
instruments
and shares in
corporations

76 Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker

77 (1)

(The First Schedule Order XXI—Execution of Decrees and Orders)

77 (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold

Sale by public auction.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner

78 No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale, but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery

Irregularity not to vitiate sale, but any person injured may sue

79 (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser

Delivery of moveable property, debts and shares

(2) Where the property sold is moveable property in the possession of some person other than the judgment debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt, or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the

purchaser

(The First Schedule Order XXI—Execution of Decrees and Orders)

purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser

Transfer of negotiable instruments and shares

80 (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party

(2) Such execution or endorsement may be in the following form, namely —

A B by C D, Judge of the Court of (or as the case may be), in a suit by E F against A B

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same, and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself

Vesting order in case of other property

81 In the case of any moveable property not heretofore provided for, the Court may make an order vesting such property in the purchaser or as he may direct and such property shall vest accordingly

Sale of immovable property

What Courts may order sales

82 Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes

Postponement of sale to enable judgment-debtor to raise amount of decree

83 (1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court

may,

(The First Schedule Order XXI —Execution of Decrees and Orders)

may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property

84 (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold

Deposit by purchaser and re-sale on default

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule

85 The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property

Time for payment in full of purchase-money

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72

86 In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold

Procedure in default of payment

(The First Schedule Order XXI—Execution of Decrees and Orders)

Notification on re sale

87 Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinafter prescribed for the sale

Bid of co-sharer to have preference

88 Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer

Application to set aside sale on deposit

89 (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale

Application to set aside sale on ground of irregularity or fraud

90 (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court

(The First Schedule Order XXI—Execution of Decrees and Orders)

Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud

91 The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest

92 (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute

Sale when to become absolute or be set aside

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made

93 Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid

Return purchase money in certain cases

94 Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute

Certificate to purchaser

95 Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if

Delivery of property in occupancy of judgment-debtor

need

(The First Schedule Order XXI—Execution of Decrees and Orders)

need be, by removing any person who refuses to vacate the same

Delivery of property in occupancy of tenant

96 Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser

Resistance to delivery of possession to decree-holder or purchaser

Resistance or obstruction to possession of immoveable property

97 (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same

Resistance or obstruction by judgment-debtor

98 Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days

Resistance or obstruction by bona fide claimant.

99 Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application

100 (1) Where

(The First Schedule Order XXI—Execution of Decrees and Orders Order XXII—Death, Marriage and Insolvency of Parties)

100 (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession

Dispossession by decree-holder or purchaser

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same

101 Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property

Bona fide claimant to be restored to possession

102 Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person

Rules not applicable to transferee *in pendente lite*

103 Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property, but, subject to the result of such suit (if any), the order shall be conclusive

Orders conclusive subject to regular suit

ORDER XXII

Death, Marriage and Insolvency of Parties

1 The death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives

No abatement by party's death, if right to sue survives

2 Where there are more plaintiffs or defendants than one and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause

Procedure where one of several plaintiffs or defendants dies and right to sue survives

(The First Schedule Order XXII—Death, Marriage and Insolvency of Parties)

an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants

Procedure in case of death of one of several plaintiffs or of sole plaintiff

3 (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff

Procedure in case of death of one of several defendants or of sole defendant

4 (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant

Determination of question as to legal representative

5 Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court

No abatement by reason of death after hearing

6 Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between

the.

(The First Schedule Order XXII—Death, Marriage and
Insolvency of Parties)

the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place

7 (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone

Suit not
abated by
marriage of
female
party

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also, and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree

8 (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct

When
plaintiff's
insolvency
bars suit

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate

Procedure
where
assignee fails
to continue
suit or give
security

9 (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action

Effect of
abatement or
dismissal

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal, and if it is

proved

(The First Schedule Order XXII—Death, Marriage and
Insolvency of Parties Order XXIII—Withdrawal and
Adjustment of Suits)

proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit

(3) The provisions of section 5 of the ¹Indian Limitation Act, 1877, shall apply to applications under sub-rule (2)

XX of 1877

Procedure in
case of
assignment
before final
order in suit

10 (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)

Application
of Order to
appeals

11 In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal

Application of
Order to
proceedings

12 Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order

ORDER XXIII

Withdrawal and Adjustment of Suits

Withdrawal
of suit or
abandonment
of part of claim

1 (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim

16

¹ See now the Indian Limitation Act, 1908 (9 of 1908) ss 4 and 5

(The First Schedule Order XXIII—Withdrawal and Adjustment of Suits Order XXIV—Payment into Court)

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others

2 In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted

Limitation law not affected by first suit

3 Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit

Compromise of suit.

4 Nothing in this Order shall apply to any proceedings in execution of a decree or order

Proceedings in execution of decrees not affected

ORDER XXIV

Payment into Court

1 The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim

Deposit by defendant of amount in satisfaction of claim

2 Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application

Notice of deposit

(The First Schedule Order XXIV—Payment into Court
Order XXV—Security for Costs)

Interest on deposit not allowed to plaintiff after notice

3 No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof

Procedure where plaintiff accepts deposit as satisfaction in part.

4 (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance, and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim

Procedure where he accepts it as satisfaction in full.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation

Illustrations

(a) A owes B Rs 100 B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage On the plaint being filed, A pays the money into Court B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part

(b) B sues A under the circumstances mentioned in illustration (a) On the plaint being filed, A disputes the claim Afterwards A pays the money into Court B accepts it in full satisfaction of his claim The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary

(c) A owes B Rs 100, and is willing to pay him that sum without suit B claims Rs 150 and sues A for that amount On the plaint being filed A pays Rs 100 into Court and disputes only his liability to pay the remaining Rs 50 B accepts the Rs 100 in full satisfaction of his claim The Court should order him to pay A's costs

ORDER XXV

Security for Costs

When security for costs may be required from plaintiff

1 (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of British

India

(The First Schedule Order XXV—Security for Costs Order XXVI—Commissions)

India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant

(2) Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub rule (1) Residence out of British India

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India

2 (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom Effect of failure to furnish security

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security, within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant

ORDER XXVI
*Commissions**Commissions to examine witnesses*

1 Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted Cases in which Court may issue commission to examine witness -
under

(The First Schedule Order XXVI—Commissions)

under this Code from attending the Court or who is from sickness or infirmity unable to attend it

Order for
Commission

2 An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined

Where witness
resides within
Court's
jurisdiction

3 A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it

Persons for
whose
examination
commission
may issue

4 (1) Any Court may in any suit issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction,
- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court, and
- (c) ¹[any person in the service of the Crown] who cannot, in the opinion of the Court, attend without detriment to the public service

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court

Commission
or Request to
examine
witness not
within
British India

5 Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request

Court to
examine
witness
pursuant to
commission

6 Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto

Return of
commission
with
depositions
of witnesses

7 Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to
the

¹ These words were substituted for the words "any civil or military officer of the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XXVI—Commissions)

the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order, and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit

8 Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

When depositions may be read in evidence

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is ¹[a person in the service of the Crown] who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same

Commissions for local investigations

9 In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court

Commissions to make local investigations

Provided that, where the ²[Provincial Government] has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules

10 (1)

¹ These words were substituted for the words "a civil or military officer of the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "Local Government" by para 4, *ibid*

(The First Schedule Order XXVI—Commissions)

Procedure of
Commissioner

10 (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court

Report and
depositions to
be evidence in
suit

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record, but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation

Commissioner
may be
examined in
person

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit

Commissions to examine accounts

Commission
to examine
or adjust
accounts

11 In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment

Court to give
Commissioner
necessary
instructions

12 (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination

Proceedings
and report to
be evidence
Court may
direct further
enquiry

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit

Commissions to make partitions

Commission
to make partition
of immoveable
property

13 Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree

(The First Schedule Order XXVI—Commissions)

14 (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares

Procedure of Commissioner

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court, and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied, but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit

General provisions

15 Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued

Expenses of commission to be paid into Court

16 Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

Powers of Commissioners

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him,
- (b) call for and examine documents and other things relevant to the subject of inquiry,
- (c) at any reasonable time enter upon or into any land or building mentioned in the order

(The First Schedule Order XXVI—Commissions)

Attendance
and
examination of
witnesses
before
Commissioner

17 (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this order whether commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of British India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper

Parties to
appear before
Commissioner

18 (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence

¹*[Commissions issued at the instance of Foreign Tribunals]*

Cases in which
High Court
may issue
commission to
examine
witness

19 (1) If a High Court is satisfied—

(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20 issue a commission for the examination of such witness

(2) Evidence

¹ The heading and rules 19 to 22 were added by s 3 of the Code of Civil Procedure (Amendment) Act, 1932 (10 of 1932)

(The First Schedule Order XXVI—Commissions)

(c) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the ¹[Central Government], or
- (b) by a letter of request issued by the foreign court and transmitted to the High Court through the ¹[Central Government], or
- (c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding

20 The High Court may issue a commission under rule 19—

Application for issue of commission.

- (a) upon application by a party to the proceeding before the foreign court, or
- (b) upon an application by a law officer of the ²[Provincial Government] acting under instructions from the ²[Provincial Government]

21 A commission under rule 19 may be issued to any court within the local limits of whose jurisdiction the witness resides, or, where ³* * * * * the witness resides within the local limits of ⁴[the ordinary original civil jurisdiction of the High Court] to any person whom the court thinks fit to execute the commission

To whom commission may be issued

22 The provisions of rules 6, 15, 16, 17 and 18 of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it to the High Court, which shall forward it to the ¹[Central Government] along with the letter of request for transmission to the foreign court]

Issue, execution and return of commissions and transmission of evidence to foreign Court

ORDER XXVII

¹ These words were substituted for the words "Governor General in Council" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "Local Government", *ibid*

³ The words "the High Court is established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, and" were omitted by para 3 and Sch I, *ibid*

⁴ These words were substituted for the words "its ordinary original civil jurisdiction", *ibid*

(The First Schedule Order XXVII—Suits by or against the Crown or Public Officers in their official capacity)

ORDER XXVII

Suits by or against ¹[the Crown] or Public Officers in their official capacity

Suits by or against the Crown.

1 In any suit by or against ²[the Crown] the plaint or written statement shall be signed by such person as ¹[the Crown] may, by general or special order, appoint in this behalf, and shall be verified by any person whom ¹[the Crown] may, so appoint and who is acquainted with the facts of the case

Persons authorised to act for the Crown.

2 Persons being *ex-officio* or otherwise authorized to act for ¹[the Crown] in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of ¹[the Crown]

Plaints in suits by or against the Crown.

3 In suits by or ³[against the Crown] instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert ⁴[the appropriate name as provided in section 79, or, if the suit is against the Secretary of State, the words 'the Secretary of State']

Agent for the Crown, to receive process

⁵[4 The Crown pleader in any court shall be the agent of the Crown for the purpose of receiving processes against the Crown issued by such court]

Fixing of day for appearance on behalf of the Crown

5 The Court, in fixing the day for ⁶[the Crown] to answer to the plaint, shall allow a reasonable time for the necessary communication ⁷[with the Crown] through the proper channel and for the issue of instructions to the ⁸[Crown pleader] to appear and answer on behalf of ⁹[the Crown] or the Government, and may extend the time at its discretion

6 The

¹ These words were substituted for the words "the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Law Order, 1937

² These words were substituted for the words "the Secretary of State for India in Council", *ibid*

³ These words were substituted for the words "against the Secretary of State for India in Council", *ibid*

⁴ These words were substituted for the words "The Secretary of State for India in Council", *ibid*

⁵ This rule was substituted, *ibid*

⁶ These words were substituted for the words "the Secretary of State for India in Council", *ibid*

⁷ These words were substituted for the words "with the Government", *ibid*

⁸ These words were substituted for the words "Government pleader" *ibid*

⁹ These words were substituted for the words "the said Secretary of State for India in Council", *ibid*

(The First Schedule Order XXVII—Suits by or against the Crown or Public Officers in their official capacity)

6 The Court may also, in any case in which the ¹[Crown pleader] is not accompanied by any person on the part of ²[the Crown] who may be able to answer any material questions relating to the suit, direct the attendance of such a person

Attendance of person able to answer questions relating to suit against Crown.

7 (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to ³[the Crown] before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel

Extension of time to enable public officer to make reference to Crown

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary

8 (1) Where ³[the Crown] undertakes the defence of a suit against a public officer, ⁴[the Crown pleader] upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits

Procedure in suits against public officer

(2) Where no application under sub-rule (1) is made by ⁴[the Crown pleader] on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties.

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree

⁵[8A No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Crown or, where the Crown has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity

No security to be required from Crown or a public officer in certain cases.

8B

¹ These words were substituted for the words "Government pleader" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² These words were substituted for the words "the Secretary of State for India in Council", *ibid*

³ These words were substituted for the words "the Government", *ibid*

⁴ These words were substituted for the words "the Government pleader", *ibid*

⁵ Rules 8A and 8B were added, *ibid*

(The First Schedule Order XXVII—Suits by or against the Crown or Public Officers in their official capacity Order XXVIII—Suits by or against Military or Naval Men or Airmen)

Definition of
"Crown" and
"Crown
pleader"

8B In this Order "Crown" and "Crown pleader" mean respectively—

- (a) in relation to any suit by or against the Secretary of State or the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order,
- (b) in relation to any suit by or against the Crown Representative, or against a public officer employed in connection with the exercise of the functions of the Crown in its relations with Indian States, the Crown Representative and such pleader as he may appoint, whether generally or specially, for the purposes of this Order, and
- (c) in relation to any suit by, or against a Provincial Government or against a public officer in the service of a Province, the Provincial Government and the Government pleader, or such other pleader as the Provincial Government may appoint, whether generally or specially, for the purposes of this Order.]

ORDER XXVIII

Suits by or against Military ¹[or Naval] *Men* ²[or Airmen]

Officers,
soldiers,
sailors or
airmen who
cannot obtain
leave may
authorize
any person
to sue or
defend for
them

1 (1) Where any officer ³[soldier ⁴[sailor] or airman] actually ⁵[serving under the Crown] in ⁶[such] capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead

(2) The

¹ These words were inserted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

² These words were inserted by s 2 and First Sch of the Repealing and Amending Act, 1927 (10 of 1927)

³ The words "soldier or airman" were substituted for the words "or soldier," *ibid*

⁴ The word "sailor" was inserted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

⁵ These words were substituted for the words "serving the Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

⁶ This word was substituted for the words "a military or air force" by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

(The First Schedule Order XXVIII—Suits by or against Military or Naval Men or Airmen)

(2) The authority shall be in writing and shall be signed by the officer ¹[soldier ²[sailor] or airman] in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer ¹[soldier ²[sailor] or airman] is serving in military, ³[naval] ⁴[or airforce] staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer ¹[soldier ²[sailor] or airman] by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, ⁵[ship,] detachment or depôt to which the officer ¹[soldier ²[sailor] or airman] belong.

2 Any person authorized by an officer ⁶[soldier ²[sailor] or airman] to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer ¹[soldier ²[sailor] or airman] could do if present, or he may appoint a pleader to prosecute or defend the suit on behalf of such officer ¹[soldier ²[sailor] or airman].

Person so authorized may act personally or appoint pleader

3 Process served upon any person authorized by an officer ⁶[soldier ²[sailor] or airman] under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

Service on person so authorized or on his pleader, to be good service

ORDER XXIX

¹ The words “soldier or airman” were substituted for the words “or soldier” by s 2 and First Sch of the Repealing and Amending Act, 1927 (10 of 1927)

² This word was inserted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

³ This word was inserted, *ibid*

⁴ These words were inserted by s 2 and First Sch. of the Repealing and Amending Act, 1927 (10 of 1927)

⁵ This word was inserted by s 2 and Sch of the Amending Act, 1934 (35 of 1934)

⁶ The words “soldier or airman” were substituted for the words “or a soldier” by s 2 and First Sch of the Repealing and Amending Act, 1927 (10 of 1927)

(The First Schedule Order XXIX—Suits by or against Corporations Order XXX—Suits by or against Firms and Persons carrying on business in names other than their own)

ORDER XXIX

Suits by or against Corporations

Subscription
and verifica-
tion of
pleading

1 In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case

Service on
corporation

2 Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business

Power to
require
personal
attendance
of officer of
Corporation

3 The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit

ORDER XXX

Suits by or against Firms and Persons carrying on business in names other than their own

Suing of
partners in
name of firm

1 (1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct

(The First Schedule Order XXX—Suits by or against Firms and Persons carrying on business in names other than their own)

(2) Where persons sue or are sued as partners in the names of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons

2 (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any dependant forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted

Disclosure of partners names

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint

Provided that all the proceedings shall nevertheless continue in the name of the firm

3 Where persons are sued as partners in the name of their firm, the summons shall be served either—

of Service.

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct, and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within British India whom it is sought to make liable

4 (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing

Right of suit on death of partner

(The First Schedule Order XXX—Suits by or against Firms and Persons carrying on business in names other than their own)

provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit—

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors

Notice in what capacity served

5 Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner

Appearance of partners

6 Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm

No appearance except by partners

7 Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued

Appearance under protest

8 Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared

Suits between co partners

9 This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common, but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just

(The First Schedule Order XXX—Suits by or against Firms and Persons carrying on business in names other than their own Order XXXI—Suits by or against Trustees, Executors and Administrators Order XXXII—Suits by or against Minors and Persons of Unsound Mind)

10 Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit, all rules under this Order shall apply

Suit against person carrying on business in name other than his own

ORDER XXXI

Suits by or against Trustees, Executors and Administrators

1 In all suits concerning property vested, in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties

Representation of beneficiaries in suits concerning property vested in trustees, etc

2 Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them

Joinder of trustees, executors and administrators

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties

3 Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her

Husband of married executrix not to join

ORDER XXXII

Suits by or against Minors and Persons of Unsound Mind

1 Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor

Minor to sue by next friend

2 (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented

Where suit is instituted without next friend, plaint to be taken off the file

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit

3 (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor

Guardian for the suit to be appointed by Court for minor defendant

(2) An

(The First Schedule Order XXXII—Suits by or against Minors and Persons of Unsound Mind)

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule

¹[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree]

Who may act as next friend or be appointed guardian for the suit

4 (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be

(3) No

¹ This sub-rule was added by s 2 of the Code of Civil Procedure (Third Amendment) Act, 1937 (16 of 1937)

(The First Schedule Order XXVII—Suits by or against Minors and Persons of Unsound Mind)

(3) No person shall without his consent be appointed guardian for the suit

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayments or allowance of such costs as justice and the circumstances of the case may require

5 (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit

Representa-
tion of minor
by next friend
or guardian
for the suit

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader

6 (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

Receipt by
next friend
or guardian
for the suit
of property
under decree
for minor

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application

7 (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf

Agreement or
compromise
by next
friend or
guardian for
the suit

of

(The First Schedule Order XXXII—Suits by or against
Minors and Persons of Unsound Mind)

of a minor with reference to the suit in which he acts as next friend or guardian

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor

Retirement
of next
friend

8 (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor

Removal of
next friend.

9 (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal, and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit

Stay of
proceedings on
removal, etc.,
of next
friend

10 (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place

(2) Where

(The First Schedule Order XXXII—Suits by or against
Minors and Persons of Unsound Mind)

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit

11 (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit

Retirement,
removal or
death of
guardian for
the suit

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place

12 (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application

Course to be
followed by
minor plaintiff
or applicant
on attaining
majority

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus —

“A B, late a minor, by C D, his next friend, but now having attained majority”

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend

(5) Any application under this rule may be made *ex parte* but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend

13 (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff, and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit

Where minor
co plaintiff
attaining
majority
desires to
repudiate
suit.

(2) Notice

(The First Schedule Order XXXII—Suits by or against
Minors and Persons of Unsound Mind)

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant

Unreasonable
or improper
suit

14 (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper

(2) Notice of the application shall be served on all the parties concerned, and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit

Application of
rules to persons
of unsound
mind

15 The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued

Saving for
Princes and
Chiefs

16 Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of ¹[the Central Government, or the Crown Representative, or a Provincial Government] in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind

ORDER XXXIII

¹ These words were substituted for the words "the Governor General in Council or a Local Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XXXIII—Suits by Paupers)

ORDER XXXIII

Suits by Paupers

1 Subject to the following provisions, any suit may be instituted by a pauper

Suits may be instituted in forma pauperis

Explanation—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit

2 Every application for permission to sue as a pauper shall contain the particulars required in regard to plants in suits a schedule of any moveable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto, and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings

Contents of application.

3 Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person

Presentation of application.

4 (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant

Examination of applicant

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken

If presented by agent, Court may order applicant to be examined by commission.

5 The Court shall reject an application for permission to sue as a pauper—

Rejection of application.

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where

(The First Schedule Order XXXIII—Suits by Paupers)

- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) where his allegations do not show a cause of action, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter

Notice of
day for
receiving
evidence of
applicant's
pauperisms

6 Where the Court sees no reason to reject the application on any of the grounds stated in rule 5 it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof

Procedure at
hearing

7 (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper

Procedure if
application
admitted

8 Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit

Dispaupering

9 The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice

(The First Schedule Order XXXIII—Suits by Paupers)

in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit,
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper, or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter

10 Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, such amount shall be recoverable by the ¹[Provincial Government] from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit

Costs where pauper succeeds.

11 Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed—

Procedure where pauper fails

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or
- (b) because the plaintiff does not appear when the suit is called on for hearing

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper

12 The ¹[Provincial Government] shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11

Provincial Government may apply for payment of court-fees

13 All matters arising between the ¹[Provincial Government] and any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47

Provincial Government to be deemed a party

14 Where

¹ These words were substituted for the word "Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XXXIII—Suits by Paupers
Order XXXIV—Suits relating to Mortgages of Immoveable Property)

Copy of decree
to be sent to
Collector

14 Where an order is made under rule 10, rule 11 or rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector

Refusal to
allow
applicant to
sue as pauper
to bar subse-
quent
application of
like nature.

15 An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue, but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the ¹[Provincial Government] and by the opposite party in opposing his application for leave to sue as a pauper

Costs

16 The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit

ORDER XXXIV

Suits relating to Mortgages of Immoveable Property

Parties to
suits for
foreclosure,
sale and
redemption

1 Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage

Explanation—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit, and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage

Preliminary
decree in fore-
closure suit

²[2 (1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the

¹ These words were substituted for the word "Government" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² Rules 2 to 8 were substituted by s 4 of the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929)

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)

- (ii) the costs of suit, if any, awarded to him, and
 - (iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon, or
- (b) declaring the amount so due at that date, and
- (c) directing—
- (i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and counter-signs the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, and
 - (ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property

(2) The

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No 9 or Form No 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require

Final decree
in foreclosure
suit

13 (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also if necessary,—

(c) ordering him to put the defendant in possession of the property

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property

(3) On

¹ See footnote 2 on p 230

(The First Schedule Order XXXIV—Suits relating to
Mortgages of Immoveable Property)

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged

14 (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same

Preliminary
decree in
suit for sale

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest

(3) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

Power to
decree sale
in foreclosure
suit

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the
suit

¹ See footnote 2 on p 230.

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)

suit in the manner and form set forth in Form No 9, Form No 10 or Form No 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require

Final decree
in suit for
sale.

¹⁵ (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase-money paid into Court by the purchaser

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent thereof

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4

16 Where-

¹ See footnote 2 on p 230

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)

16. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance

Recovery of balance due on mortgage in suit for sale

17 (1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree—

Preliminary decree in redemption suit

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

- (i) principal and interest on the mortgage,
- (ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of his mortgage-security, together with interest therein, or

(b) declaring the amount so due at that date, and

(c) directing—

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10 together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or,

where

¹ See footnote 2 on p 230.

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)

where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property, and

- (ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interests, the defendant shall be entitled to apply for a final decree—
- (a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or
- (b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest

Final decree
in redemption
suit

18. (1) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order—

- (a) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and

¹ See footnote 2 on p 230

(The First Schedule Order XXXIV—Suits relating to
Mortgages of Immoveable Property)

and, if necessary,—

- (b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and, also, if necessary,—

- (c) ordering him to put the plaintiff in possession of the property

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase-money paid into Court by the purchaser

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent thereof

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the defendant in this behalf,—

- (a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property, or

- (b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same]

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)

Recovery of balance due on mortgage in suit for redemption

¹[8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance]

Decree where nothing is found due or where mortgagee has been overpaid

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him and the plaintiff shall, if necessary, be put in possession of the mortgaged property

Costs of mortgagee subsequent to decree

²[10 In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment

Payment of interest

11 In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely —

- (a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—
 - (i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,
 - (ii) on the amount of the costs of the suit awarded to the mortgagee,—at such rate as the Court deems

reasonable

¹ This rule was inserted by s 5 of the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929)

² Rules 10 and 11 were substituted by s 6, *ibid*

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property)*

reasonable from the date of the preliminary decree, and

- (ii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent per annum, and
- (b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—
 - (i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause, and
 - (ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10]

12. Where any property, the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold

13. (1) Such proceeds shall be brought into Court and applied as follows —

- first, in payment of all expenses incident to the sale or properly incurred in any attempted sale,
- secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith,
- thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made,

fourthly,

(The First Schedule Order XXXIV—Suits relating to Mortgages of Immoveable Property Order XXXV—Interpleader)

fourthly, in payment of the principal money due on account of that mortgage, and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882

IV of 1882

Suit for sale necessary for bringing mortgaged property to sale

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, has not been extended

Mortgages by the deposit of title-deeds and charges

¹[15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882]

IV of 1882.

ORDER XXXV,

Interpleader

Plaint in interpleader suits.

1. In every suit of interpleader the plaintiff shall, in addition to other statements necessary for plaintiffs, state—

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) the claims made by the dependants severally, and
- (c) that there is no collusion between the plaintiff and any of the defendants

2 Where

¹ This rule was substituted by s 7 of the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929)

(The First Schedule Order XXXV —Interpleader)

2 Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit

Payment of thing claimed into Court

3 Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him, and his costs in the suit so stayed may be provided for in such suit, but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit

Procedure where defendant is suing plaintiff

4. (1) At the first hearing the Court may—

Procedure at first hearing.

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit, or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords

Agents and tenants may not institute interpleader suits

Illustrations

(a) A deposits a box of jewels with B as his agent C alleges that the jewels were wrongfully obtained from him by A, and claims them from B B cannot institute an interpleader suit against A and C

(b) A

(The First Schedule Order XXXV—Interpleader
Order XXXVI—Special Case)

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

Charge for
plaintiff's
costs

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI

Special Case

Power to
state case
for Court's
opinion

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them, or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them, or

(c) one or more of the parties shall do or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Where value
of subject-
matter must
be stated

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement
to be filed
and registered
as suit

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value

(The First Schedule Order XXXVI—Special Case Order XXXVII—Summary Procedure on Negotiable Instruments)

value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement

(2) The agreement, when so filed shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants, and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein Parties to be subject to Court's jurisdiction

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suits so far as the same are applicable Hearing and disposal of case

(2) Where the Court is satisfied after examination of the parties, or after taking such evidence as it thinks fit,—

(a) that the agreement was duly executed by them,

(b) that they have a *bond fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow

ORDER XXXVII

Summary Procedure on Negotiable Instruments

1. This Order shall apply only to—

(a) the High Courts of Judicature at Fort William, Madras and Bombay,

1 * * * * *

(c) the Court of the Judicial Commissioner of Sind, and

(d) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied

Application of Order

2. (1) All

¹ The entry relating to the Chief Court of Lower Burma was omitted by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XXXVII—Summary Procedure on Negotiable Instruments)

Institution of summary suits upon bills of exchange, etc

2. (1) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed, but the summons shall be in Form No 4 in Appendix B or in such other form as may be from time to time prescribed

(2) In any case in which the plant and summons are in such forms, respectively the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend, and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree—

¹[(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments, Act, 1881, up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit, and

XXVI of 188

(b) for such subsequent interest, if any, as the Court may order under section 84 of this Code, and

(c) for such sum for costs as may be prescribed

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way

(3) A decree passed under this rule may be executed forthwith]

Defendant showing defence on merits to have leave to appear

3 (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application

(2) Leave

¹ These words were substituted by s 4 of the Negotiable Instruments (Interest) Act, 1926 (30 of 1926)

(The First Schedule Order XXXVII—Summary Procedure on Negotiable Instruments Order XXXVIII.—Arrest and Attachment before Judgment)

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit Power to set aside decree

5 In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof Power to order bill, etc., to be deposited with officer of Court.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note Recovery of cost of noting non-acceptance of dishonoured bill or note

7 Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner Procedure in suits

ORDER XXXVIII

Arrest and Attachment before Judgment

Arrest before Judgment

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,— Where defendant may be called upon to furnish security for appearance.

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct

or

(The First Schedule Order XXXVIII—Arrest and Attachment before Judgment)

or delay the execution of any decree that may be passed against him,—

- (i) has absconded or left the local limits of the jurisdiction of the Court, or
- (ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or
- (iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or
- (b) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim, and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court

Security

2 (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit

3. (1) A

(The First Schedule Order XXXVIII—Arrest and Attachment before Judgment)

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation Procedure on application by surety to be discharged

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied Procedure where defendant fails to furnish security or find fresh security

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees

Provided also that no person shall be detained in prison under this rule after he has complied with such order

Attachment before Judgment

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,— Where defendant may be called upon to furnish security for production of property

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security

(2) The

(The First Schedule Order XXXVIII—Arrest and Attachment before Judgment)

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified

Attachment where cause not shown or security not furnished.

6 (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit

Mode of making attachment

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree

Investigation of claim to property attached before judgment

8 Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner herebefore provided for the investigation of claims to property attached in execution of a decree for the payment of money

Removal of attachment when security furnished or suit dismissed.

9 Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed

Attachment before judgment not to affect rights of strangers, nor bar decree holder from applying for sale

10 Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree

Property attached before judgment not to be re-attached in execution of decree

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an

application

(The First Schedule Order XXXVIII—Arrest and Attachment before Judgment Order XXXIX—Temporary Injunctions and Interlocutory Orders)

application for execution of such decree to apply for a re-attachment of the property

12. Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce

Agricultural produce not attachable before judgment

¹[13 Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immoveable property]

Small Cause Court not to attach immoveable property

ORDER XXXIX

Temporary Injunctions and Interlocutory Orders.

Temporary Injunctions

1. Where in any suit it is proved by affidavit or otherwise—

Cases in which temporary injunction may be granted

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders

2 (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind,

Injunction to restrain repetition or continuance of breach

whether

¹ This rule was added by s 4 of the Small Cause Courts (Attachment of Immoveable Property) Act, 1926 (1 of 1926)

(The First Schedule Order XXXIX—Temporary Injunctions and Interlocutory Orders)

whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release

(4) No attachment under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto

Before granting injunction, Court to direct notice to opposite party

3 The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party

Order for injunction may be discharged, varied or set aside

4 Any order for an injunction may be discharged or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order

Injunction to corporation binding on its officers

5 An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain

Interlocutory Orders

Power to order interim sale

6 The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any

moveable

(The First Schedule Order XXXIX—Temporary Injunctions and Interlocutory Orders)

moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

Detention, preservation, inspection, etc., of subject-matter of suit

- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein,
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit

Application for such orders to be after notice.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure

When party may be put in immediate possession of land the subject-matter of suit.

and

(The First Schedule' Order XXXIX—Temporary Injunctions
and Interlocutory Orders Order XL—Appointment of
Receivers)

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit

Deposit of
money, etc, in
Court

10. Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court

ORDER XL

Appointment of Receivers

Appointment
of receivers

1. (1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree,
- (b) remove any person from the possession or custody of the property,
- (c) commit the same to the possession, custody, or management of the receiver, and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove

2 The

(The First Schedule Order XL—Appointment of receivers.
Order XLI—Appeals from Original Decrees)

2. The Court may by general or special order fix the amount ^{Remuneration.} to be paid as remuneration for the services of the receiver

3. Every receiver so appointed shall—

Duties

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property,
- (b) submit his accounts at such periods and in such form as the Court directs,
- (c) pay the amount due from him as the Court directs, and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence

4. Where a receiver—

Enforcement of receiver's duties

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property

When Collector may be appointed receiver

ORDER XLI

Appeals from Original Decrees

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf

Form of appeal
What to accompany memorandum.

(The First Schedule Order XLI—Appeals from Original Decrees)

behalf The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded

Contents of memorandum

(2) The memorandum shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively

Grounds which may be taken in appeal

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal, but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground

Rejection or amendment of memorandum

3 (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all

4 Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be

Stay of proceedings and of execution

Stay by Appellate Court

5 (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the

(The First Schedule Order XLI—Appeals from Original Decrees)

the Appellate Court may order, nor shall execution of a decree be stayed by reason only, of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause order stay of execution of such decree

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed Stay by Court which passed the decree

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made,

(b) that the application has been made without unreasonable delay, and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security Security in case of order for execution of decree appealed from

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of

(The First Schedule Order XLI—Appeals from Original
Decrees)

1* * * * * *

Exercise of powers in appeal from order made in execution of decree

8 The powers conferred by rules 5 and 6 shall be exercise-able where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal

Registry of memorandum of appeal

9 (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose

Register of Appeals

(2) Such book shall be called the Register of Appeals

Appellate Court may require appellant to furnish security for costs

10. (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both

Where appellant resides out of British India

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immovable property within British India other than the property (if any) to which the appeal relates

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal

Power to dismiss appeal without sending notice to Lower Court

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed

(3) The

¹ Rule 7 was omitted by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XLI.—Appeals from Original Decrees)

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred

12 (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal Day for hearing appeal

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred Appellate Court to give notice to Court whose decree appealed from

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court Transmission of papers to Appellate Court

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made, and copies of such paper shall be made at the expense of, and given to, the applicant Copies of exhibits in Court whose decree appealed from

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice Publication and service of notice of day for hearing appeal

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to Appellate Court may itself cause notice to be served

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex-parte* Contents of notice

(The First Schedule Order XII—Appeals from Original Decrees)

Procedure on hearing

Right to begin.

16 (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply

Dismissal of appeal for appellants default

17 (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed

Hearing appeal *ex parte*

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs

18 Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing

Re-admission of appeal dismissed for default

19 Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18 the appellant may apply to the Appellate Court for the re-admission of the appeal, and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit

Power to adjourn hearing and direct persons appearing interested to be made respondents

20 Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent

Re-hearing on application of respondent against whom *ex parte* decree made

21 Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate

(The First Schedule Order XLI—Appeals from Original Decrees)

Appellate Court to re-hear the appeal, and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him

22 (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow

Upon hearing, respondent may object to decree as if he had preferred separate appeal

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto

Form of objection and provisions applicable thereto

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule

23 Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court, may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order

Remand of case by Appellate Court

(The First Schedule Order XLI—Appeals from Original Decrees)

to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit, and the evidence (if any) recorded during the original trial shall, subject to all just exceptions be evidence during the trial after remand

Where evidence on record sufficient, Appellate Court may determine case finally

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor

Findings and evidence to be put on record
Objections to finding

26 (1) Such evidence and findings shall form part of the record in the suit, and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding

Determination of appeal

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal

Production of additional evidence in Appellate Court

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the

(The First Schedule Order XLI—Appeals from Original Decrees)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court

Mode of taking additional evidence

29. Where additional evidence is directed or allowed to be taken the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified

Points to be defined and recorded

Judgment in appeal

30 The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders

Judgment when and where pronounced.

31. The judgment of the Appellate Court shall be in writing and shall state—

Contents, date and signature of judgment.

(a) the points for determination,

(b) the decision thereon,

(c) the reasons for the decision, and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein

32. The

(The First Schedule Order XLI—Appeals from Original Decrees)

What judgment may direct

32 The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly

Power of Court of Appeal

33 The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection

¹[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order]

Illustration

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X X appeals and A and Y are respondents The Appellate Court decides in favour of X It has power to pass a decree against Y

Dissent to be recorded

34 Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same

Decree in appeal

Date and contents of decree

35 (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent,
and

¹ This proviso was added by s 4 of the Civil Procedure (Amendment) Act, 1922 (9 of 1922)

(The First Schedule Order XLI.—Appeals from Original Decrees Order XLII—Appeals from Appellate Decrees Order XLIII—Appeals from Orders)

and a clear specification of the relief granted or other adjudication made

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid

(4) The decree shall be signed and dated by the Judge or Judges who passed it

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits

ORDER XLII

Appeals from Appellate Decrees

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees

ORDER XLIII

Appeals from Orders

1. An appeal shall lie from the following orders under the provisions of section 104, namely —

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court,

(b) an

(The First Schedule Order XLIII — Appeals from Orders)

- (b) an order under rule 10 of Order VIII pronouncing judgment against a party,
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*,
- (e) an order under rule 4 of Order X pronouncing judgment against a party,
- (f) an order under rule 21 of Order XI,
- (g) an order under rule 10 of Order XVI for the attachment of property,
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party,
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement,
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale,
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit
- (l) an order under rule 10 of Order XXII giving or refusing to give leave,
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction,
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,
- (o) an order ¹[under rule 2, rule 4 or rule 7] of Order XXXIV refusing to extend the time for the payment of mortgage-money,
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV,
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII,

(r) an

¹ These words and figures were substituted by s. 2 of the Transfer of Property (Amendment) Supplementary Act, 1930 (16 of 1930)

(The First Schedule Order XLIII—Appeals from Orders
Order XLIV—Pauper Appeals)

- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX,
 - (s) an order under rule 1 or rule 4 of Order XL,
 - (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal,
 - (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court,
 - (v) an order, made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV,
 - (w) an order under rule 4 of Order XLVII granting an application for review
- 2 The rules of Order XLI shall apply, so far as may be, Procedure to appeals from orders

ORDER XLIV

Pauper Appeals

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable

Who may
appeal as
pauper

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust

Procedure on
application
for admission
of appeal.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred

Inquiry into
pauperism

Provided

(The First Schedule Order XLIV—Pauper Appeals.
Order XLV—Appeals to the King in Council)

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry

ORDER XLV

Appeals to the King in Council

"Decree" defined.

1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order

Application to Court whose decree complained of

2. Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of

Certificate as to value or fitness

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted

Consolidation of suits

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination

Remission of dispute to Court of first instance

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount

or

(The First Schedule Order XLV—Appeals to the King in Council)

or value and shall return its report together with the evidence to the Court by which the reference was made

6 Where such certificate is refused, the petition shall be dismissed Effect of refusal of certificate.

7. (1) Where the certificate is granted, the applicant shall, within ¹[ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow] from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,— Security and deposit required on grant of certificate

(a) furnish security ²[in cash or in Government securities] for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit, except—

(1) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being,

(2) papers which the parties agree to exclude,

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded

³[Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security]

(2) Where

¹ These words were substituted for the words "six months" by s 3 (t) of the Indian Limitation and Code of Civil Procedure (Amendment) Act 1920 (26 of 1920)

² These words were inserted by s 3 (ii), *ibid*.

³ This proviso was added by s 3 (iii), *ibid*

(The First Schedule Order XLV—Appeals to the King in Council)

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also within the time mentioned in sub-rule (1), deposit the amount required to defray the expense of printing such copy

Admission of appeal and procedure thereon

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them

Revocation of acceptance of security

9 At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security and make further directions thereon

Power to dispense with notices in case of deceased parties

¹[9A Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court-house of the Judge of the District in which the suit was originally brought and by publication in such newspapers as the Court may direct]

Power to order further security or payment

10 Where at any time after the admission of an appeal but before the transmission of the copy of the record except as aforesaid, to His Majesty in Council, such security appears inadequate,

or

¹This rule was inserted by s 4 of the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (28 of 1920)

(The First Schedule Order XLV—Appeals to the King in Council)

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment

11. Where the appellant fails to comply with such order, the proceedings shall be stayed,

Effect of failure to comply with order

and the appeal shall not proceed without an order in this behalf of His Majesty in Council,

and in the meantime execution of the decree appealed from shall not be stayed

12 When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7

Refund of balance deposit

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs

Powers of Court pending appeal

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction

respecting

(The First Schedule Order XLV—Appeals to the King in Council)

respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise

Increase of
security
found
inadequate.

14 (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security

(2) In default of such further security being furnished as required by the Court,—

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security,

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit

Procedure to
enforce
orders of
King in
Council

15 (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same, and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount

(The First Schedule Order XLV—Appeals to the King in Council)

so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order 1* * * * *for the adjustment of financial transactions between the Imperial and the Indian Governments

²[(4) Unless His Majesty in Council is pleased otherwise to direct, no order of His Majesty in Council shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place]

16. The orders made by the Court which executes the order of His Majesty in Council, relating to such execution shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees ^{Appeal from order relating to execution.}

³[17. Where a certificate has been given under section 205(1) of the Government of India Act, 1935, the provisions of this Order shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council and references in this Order to His Majesty in Council and to any Order of His Majesty in Council shall be construed as references to the Federal Court and the rules of the Federal Court — ^{Appeals to Federal Court.}

Provided that—

(a) rule 3 of this Order shall have effect as if at the end of sub-rule (1) thereof there were inserted the words

“ apart

¹ The words “ by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty’s Treasury ” were omitted by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

² This sub rule was added by s 5 of the Indian Limitation and Code of Civil Procedure (Amendment) Act, 1920 (28 of 1920)

³ This rule was added by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Order XLV -- Appeals to the King in Council Order XLVI -- Reference)

“apart from any question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder”,

- (b) where the only ground of appeal stated in the petition is that any question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder has been wrongly decided, the petition need not pray for such a certificate as is mentioned in rule 3, and the like proceedings shall be had thereon as if such a certificate had been given except that no security shall be required for the costs of the respondent] ^{26, Geo 5, O}

ORDER XLVI

Reference

Reference of question to High Court

1 Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court

Court may pass decree contingent upon decision of High Court

2 The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred,

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference

Judgment of High Court to be transmitted, and case disposed of accordingly.

3. The High Court, after hearing the parties if they appear and desue to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made, and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court

4 The

(The First Schedule Order XLVI—Reference)

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case Costs of reference to High Court

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit Power to alter, etc., decree of Court making reference

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit Power to refer to High Court questions as to jurisdiction in small causes

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstances appears to it to be just and proper

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule

(The First Schedule Order XLVII—Review)

ORDER XLVII

Review

Application
for review of
judgment

- 1 (1) Any person considering himself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
 - (b) by a decree or order from which no appeal is allowed, or
 - (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review

To whom
applications
for review
may be
made

2 An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed, but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a) be disposed of by his successor

Form of
applications for
review

3 The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review

Application
where
rejected

4 (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application

(2) Where

(The First Schedule Order XLVII—Review)

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same **Application where granted**

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation

5. Where the Judge or Judges or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same **Application for review in Court consisting of two or more Judges**

6 (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected **Application where rejected**

(2) Where there is a majority, the decision shall be according to the opinion of the majority

7. (1) An order of the Court rejecting the application shall not be appealable, but an order granting an application may be objected to on the ground that the application was— **Order of rejection not appealable**

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause **Objections to order granting application**

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit

(2) Where

(The First Schedule Order XLVII—Review Order XLVIII.
—Miscellaneous)

(2) Where the application has been rejected in consequence of the failure of the applicant to appear he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party

Registry of application granted and order for re-hearing

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once rehear the case or make such order in regard to the re-hearing as it thinks fit

Bar of certain applications

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained

ORDER XLVIII

Miscellaneous

Process to be served at expense of party issuing

1 (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs

Costs of service

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued

Orders and notices how served

2 All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons

Use of forms in appendices

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned

ORDER

(The First Schedule Order XLIX—Chartered High Courts.)

ORDER XLIX

Chartered High Courts

1 Notice to produce documents, summonses to witnesses, ^{Who may serve} and every other judicial process, issued in the exercise of the ^{processes of} original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs

2 Nothing in this schedule shall be deemed to limit or ^{Saving in respect of} otherwise affect any rules in force at the commencement of ^{Chartered High Courts.} this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court

3 The following rules shall not apply to any Chartered ^{Application of} High Court in the exercise of its ordinary or extraordinary ^{rules.} original civil jurisdiction, namely —

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII,

(2) rule 3 of Order X,

(3) rule 2 of Order XVI,

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rules 1 to 8 of Order XX, and

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum),

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction

ORDER

(The First Schedule Order L—Provincial Small Cause Courts
Order LI—Presidency Small Cause Courts)

ORDER L

Provincial Small Cause Courts

Provincial
Small Cause
Courts.

1 The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts **IX** of 1887 Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say—

(a) so much of this schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits,

(ii) the execution of decrees against immoveable property or the interests of a partner in partnership property,

(iii) the settlement of issues, and

(b) the following rules and orders,—

Order II, rule 1 (frame of suit)

Order X, rule 3 (record of examination of parties),

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment,

Order XVIII, rules 5 to 12 (evidence),

Orders XLI to XLV (appeals),

Order XLVII, rules 2, 3, 5, 6, 7 (review),

Order LI

ORDER LI

Presidency Small Cause Courts

Presidency
Small Cause
Courts

1 Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882, this schedule shall **XV** of 1882. not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay

APPENDIX A

(The First Schedule Appendix A—Pleadings)

APPENDIX A

PLEADINGS

(1) TITLES OF SUITS

IN THE COURT OF—

| | | |
|-----|------------------------------------------|------------|
| A B | (<i>add description and residence</i>) | Plaintiff, |
| | against | |
| C D | (<i>add description and residence</i>) | Defendant. |

(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES

¹[the Secretary of State or the Federation of India or the Province of _____, as the case may be,]

The Advocate General of _____

The Collector of _____

The State of _____

The A B Company, Limited, having its registered office at _____

A B, a public officer of the C D Company _____

A B (*add description and residence*), on behalf of himself and all other creditors of C D, late of (*add description and residence*) _____

A B (*add description and residence*), on behalf of himself and all other holders of debentures issued by the Company, Limited _____

The Official Receiver _____

A B, a minor (*add description and residence*), by C D. [or by the Court of Wards], his next friend _____

A B

¹This entry was substituted for the original entry "The Secretary of State for India in Council" by para 3 and Sch I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Appendix A—Pleadings)

A B (*add description and residence*), a person of unsound mind [*or of weak mind*], by C D, his next friend

A B, a firm carrying on business in partnership at

A B (*add description and residence*) by his constituted attorney C D (*add description and residence*)

A B (*add description and residence*), Shebait of Thakur

A B (*add description and residence*), executor of C D, deceased

A B (*add description and residence*), heir of C D, deceased

(3) PLAINTS

No 1

MONEY LENT

(Title)

A B, the above-named plaintiff, states as follows—

1 On the day of 19 , he lent the defendant rupees repayable on the day of

2 The defendant has not paid the same, except rupees paid on the day of 19

[*If the plaintiff claims exemption from any law of limitation, say —*]

3 The plaintiff was a minor [*or insane*] from the day of till the day of

4 [*Facts showing when the cause of action arose and that the Court has jurisdiction*]

5 The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees

6 The plaintiff claims rupees, with interest at per cent from the day of 19

No 2

(The First Schedule Appendix A —Pleadings)

No 2

MONEY OVERPAID

(Title)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 ,
the plaintiff agreed to buy and the defendant agreed to sell
bars of silver at annas per tola of fine silver

2 The plaintiff procured the said bars to be assayed by
E F , who was paid by the defendant for such assay, and
E F declared each of the bars to contain 1,500 tolas of fine
silver, and the plaintiff accordingly paid the defendant
rupees

3 Each of the said bars contained only 1,200 tolas of fine
silver, of which fact the plaintiff was ignorant when he made
the payment

4 The defendant has not repaid the sum so overpaid

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 3

GOODS SOLD AT A FIXED PRICE AND DELIVERED

(Title)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 , E F
sold and delivered to the defendant [one hundred barrels of
flour, or the goods mentioned in the schedule hereto annexed,
or sundry goods]

2 The defendant promised to pay rupees for
the said goods on delivery [or on the day of ,
some day before the plaint was filed]

3 He has not paid the same

4 E F died on the day of 19
By h.s last will he appointed his brother, the plaintiff, his
executor

[As in paras 4 and 5 of Form No 1]

7 The plaintiff as executor of E F claims [Relief
claimed]

(The First Schedule Appendix A—Pleadings)

No 4

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

(Title)

A B, the above-named plaintiff, states as follows —

1 On the _____ day of _____ 19 _____, plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price

2 The goods were reasonably worth _____ rupees

3 The defendant has not paid the money

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 5

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED

(Title)

A B, the above-named plaintiff states as follows —

1 On the _____ day of _____ 19 _____, E F agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs] and that E F should pay for the goods on delivery _____ rupees

2 The plaintiff made the goods, and on the _____ day of _____ 19 _____, offered to deliver them to E F, and has ever since been ready and willing so to do

3 E F has not accepted the goods or paid for them

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 6

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION]

(Title)

A B, the above-named plaintiff, states as follows —

1 On the _____ day of _____ 19 _____, the plaintiff put up at auction sundry [goods], subject to the condition that all goods not paid for and removed by the purchaser within [ten days] after the sale should be re-sold by auction on his account, of which condition the defendant had notice

2 The

(The First Schedule Appendix A —Pleadings)

2 The defendant purchased [one crate of crockery] at the auction at the price of rupees

3 The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [ten days] after

4 The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards

5 On the day of 19, the plaintiff re-sold the [crate of crockery], on account of the defendant, by public auction, for rupees

6 The expenses attendant upon such re-sale amounted to rupees

7 The defendant has not paid the deficiency thus arising, amounting to rupees

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 7

SERVICES AT A REASONABLE RATE

(Title)

A B, the above-named plaintiff, states as follows —

1 Between the day of 19, and the day of 19, at, plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request, but no express agreement was made as to the sum to be paid for such services

2 The services were reasonably worth rupees

3 The defendant has not paid the money

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 8

SERVICES AND MATERIALS AT A REASONABLE COST

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19, at, the plaintiff built a house [known as No, in], and

(The First Schedule Appendix A—Pleadings)

and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials

2 The work done and materials supplied were reasonably worth rupees

3 The defendant has not paid the money
[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 9

USE AND OCCUPATION

(Title)

A B , the above-named plaintiff, executor of the will of X Y , deceased, states as follows —

1 That the defendant occupied the [house No , Street], by permission of the said X Y , from the day of 19 , until the day of 19 , and no agreement was made as to payment for the use of the said premises

2 That the use of the said premises for the said period was reasonably worth rupees

3 The defendant has not paid the money
[As in paras 4 and 5 of Form No 1]

6 The plaintiff as executor of X Y claims [Relief claimed]

No 10

ON AN AWARD

(Title)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E F and G H , and the original document is annexed hereto

2 On

(The First Schedule Appendix A —Pleadings)

2 On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff rupees]

3 The defendant has not paid the money
[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 11

ON A FOREIGN JUDGMENT

(Title)

A B , the above-named plaintiff states as follows —

1 On the day of 19 , at , in the State [or Kingdom] of , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date

2 The defendant has not paid the money
[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 12

AGAINST SURETY FOR PAYMENT OF RENT

(Title)

A B , the above-named plaintiff states as follows —

1 On the day of 19 , E F hired from the plaintiff for the term of years, the [house No , Street], at the annual rent of rupees payable [monthly]

2 The defendant agreed, in consideration of the letting of the premises to E F , to guarantee the punctual payment of the rent

3 The rent for the month of 19 , amounting to rupees, has not been paid
[If, by the terms of the agreement, notice is required to be given to the surety, add —]

4 On the day of 19 , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof

5 The

(The First Schedule Appendix A—Pleadings)

5 The defendant has not paid the same
 [As in paras 4 and 5 of Form No 1, and Relief claimed]

 No 13

BREACH OF AGREEMENT TO PURCHASE LAND

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed

[Or, on the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of
 for rupees]

2 On the day of 19 , the plaintiff being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon

3 The defendant has not paid the money
 [As in paras 4 and 5 of Form No 1, and Relief claimed]

 No 14

NOT DELIVERING GOODS SOLD

(Title)

A B, the above-named plaintiff, states as follows --

1 On the day of 19 , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the day of 19 , and that the plaintiff should pay therefor rupees on delivery

2 On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods

3 The

(The First Schedule Appendix A —Pleadings)

3 The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery

[As in paras 4 and 5 of Form No 1, and Relief claimed.]

No 15

WRONGFUL DISMISSAL

(Title.)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be] and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly]

2 On the day of 19 , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice

3 On the day of 19 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services

[As in paras 4 and 5 of Form No 1, and Relief claimed.]

No 16

BREACH OF CONTRACT TO SERVE

(Title)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year]

2 The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19 , offered so to do]

3 The

(The First Schedule Appendix A —Pleadings)

3 The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards on the day of 19 , he refused to serve the plaintiff as aforesaid

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 17

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP

(Title)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed [Or state the tenor of the contract]

[2 The plaintiff duly performed all the conditions of the agreement on his part]

3 The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner]

[As in paras 4 and 5 of Form No 1, and Relief claimed.]

No 18

ON A BOND FOR THE FIDELITY OF A CLERK

(Title)

A B , the above-named plaintiff, states as follows —

1 On the day of 19 the plaintiff took E F into his employment as a clerk

2 In consideration thereof, on the day of 19 , the defendant agreed with the plaintiff that if E F should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees

[Or, 2 In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the

penal

(The First Schedule Appendix A—Pleadings)

penal sum of rupees, subject to the condition that if *E F* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void]

[*Or*, 2 In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed]

3 Between the day of 19 , and the day of 19 , *E F* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid

[*As in paras 4 and 5 of Form No 1, and Relief claimed.*]

 No 19

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE

(*Title*)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , the defendant, by a registered instrument, let to the plaintiff [the house No , Street] for the term of years, contracting with the plaintiff, that, he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term

2 All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit

3 On the day of 19 , during the said term, *E F*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him

4 The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G H*, and *I J*, by such removal]

[*As in paras 4 and 5 of Form No 1, and Relief claimed.*]

(The First Schedule Appendix A—Pleadings)

No 20

ON AN AGREEMENT OF INDEMNITY

(Title)

A B, the the above-named plaintiff, states as follows —

1 On the day of 19 , the plaintiff and defendant, being partners in trade under the style of A B and C D, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm

2 The plaintiff duly performed all the conditions of the agreement on his part

3 On the day of 19 , [a judgment was recovered against the plaintiff and defendant by E F, in the High Court of Judicature at , upon a debt due from the firm to E F, and on the day of 19 ,] the plaintiff paid rupees [in satisfaction of the same]-

4 The defendant has not paid the same to the plaintiff

[As in paras 4 and 5 of Form No 1, and Relief claimed]

 No 21

PROCURING PROPERTY BY FRAUD

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities]

2 The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of rupees

3] The said representations were false [or state the particular falsehoods] and were then known by the defendant to be so

4 The

(The First Schedule Appendix A—Pleadings)

4 The defendant has not paid for the goods [*Or, if the goods were not delivered*] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended rupees

[*As in paras 4 and 5 of Form No 1, and Relief claimed*]

 No 22

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , the defendant represented to the plaintiff that E F was solvent and in good credit, and worth rupees over all his liabilities [*or that E F then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit*]

2 The plaintiff was thereby induced to sell to E F [*rice*] of the value of rupees [*on months credit*]

3 The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*]

4 E F [*did not pay for the said goods at the expiration of the credit aforesaid, or*] has not paid for the said rice, and the plaintiff has wholly lost the same

[*As in paras 4 and 5 of Form No 1, and Relief claimed*]

 No 23

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND

(Title)

A B, the above-named plaintiff, states as follows —

1 The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate

(The First Schedule Appendix A—Pleadings)

in and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted

2 On the day of 19 , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well

3 In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 24

CARRYING ON A NOXIOUS MANUFACTURE

(Title)

A B., the above-named plaintiff states as follows —

1 The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called , situate in

2 Ever since the day of 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands and corrupted the air, and settled on the surface of the lands

3 Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died

4 The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged

to

(The First Schedule Appendix A —Pleadings)

to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 25

OBSTRUCTING A RIGHT OF WAY

(Title)

A B , the above-named plaintiff, states as follows —

1 The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of]

2 He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, or on foot] at all times of the year

3 On the day of 19 , defendant wrongfully obstructed the said way; so that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the way [and has ever since wrongfully obstructed the same]

4 *(State special damage, if any)*

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 26

OBSTRUCTING A HIGHWAY.

(Title)

1 The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from
to so as to obstruct it

2 Thereby the plaintiff, while lawfully passing along the the said highway, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain,

and

293

(The First Schedule Appendix A—Pleadings)

and was prevented from attending to his business for a long time, and incurred expense for medical attendance

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 27

DIVERTING A WATER-COURSE

(Title)

A B, the above-named plaintiff, states as follows —

1 The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the _____, in the village of _____, district of _____

2 By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill

3 On the _____ day of _____ 19____, the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill

4 By reason thereof the plaintiff has been unable to grind more than _____ sacks per day, whereas, before the said diversion of water, he was able to grind _____ sacks per day

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 28

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION

(Title)

A B, the above-named plaintiff, states as follows —

1 Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands

2 On the _____ day of _____ 19____, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 29

(The First Schedule Appendix A —Pleadings)

No 29

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD

(Title)

A B., the above-named plaintiff, states as follows —

1 On the day of 19 , the defendants were common carriers of passengers by railway between and

2 On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway

3 While he was such passenger, at [or near the station of or between the stations of and], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc , and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman]

[As in paras 4 and 5 of Form No 1, and Relief claimed]

[Or thus —2 On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc , as in para 3]

No 30

INJURIES CAUSED BY NEGLIGENT DRIVING

(Title)

A B , the above-named plaintiff, states as follows —

1 The plaintiff is a shoemaker, carrying on business at The defendant is a merchant of

2 On the day of 19 , the plaintiff was walking southward along Chowringhee, in the City of

Calcutta

(The First Schedule Appendix A —Pleadings)

4 Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him, or in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E F*, or in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint

[As in paras 4 and 5 of Form No 1, and Relief claimed]

No 32

MOVEABLES WRONGFULLY DETAINED

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , plaintiff owned [or state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is rupees

2 From that day until the commencement of this suit the defendant has detained the same from the plaintiff

3 Before the commencement of the suit, to wit, on the day of 19 , the plaintiff demanded the same from the defendant, but he refused to deliver them

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had,

(2) rupees compensation for the detention thereof

The Schedule

No 33

297

(The First Schedule Appendix A—Pleadings)

No 33

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , the defendant *C D* , for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities]

2 The plaintiff was hereby induced to sell and deliver to *C D* [one hundred boxes of tea], the estimated value of which is rupees

3 The said representations were false, and were then known by *C D* to be so [or at the time of making the said representations, *C D* was insolvent, and knew himself to be so]

4 *C D* afterwards transferred the said goods to the defendant *E F* without consideration [or who had notice of the falsity of the representation]

[As in paras 4 and 5 of Form No 1]

7 The plaintiff claims—

- (1) delivery of the said goods, or rupees, in case delivery cannot be had
- (2) rupees compensation for the detention thereof

 No 34

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE

(Title)

A B, the above-named plaintiff, states as follows —

1 On the day of 19 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant situated at , contained [ten bighas]

2 The

(The First Schedule Appendix A —Pleadings)

2 The plaintiff was thereby induced to purchase the same at the price of _____ rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3 On the _____ day of _____ 19 _____, the plaintiff paid the defendant _____ rupees as part of the purchase-money.

4 That the said piece of ground contained in fact only [nve bighas]

[As in paras. 4 and 5 of Form No 1]

7 The plaintiff claims—

(1) _____ rupees, with interest from the day of _____ 19 _____,

(2) that the said agreement be delivered up and cancelled.

No 35

AN INJUNCTION RESTRAINING WASTE

(Title)

A B, the above-named plaintiff, states as follows —

1 The plaintiff is the absolute owner of [*describe the property*]

2 The defendant is in possession of the same under a lease from the plaintiff.

3 The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[Pecuniary compensation may also be claimed]

No 36

(The First Schedule Appendix A—Pleadings)

No 36

INJUNCTION RESTRAINING NUISANCE

(Title)

A B, the above-named plaintiff, states as follows —

1 Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No , Street, Calcutta]

2 The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street]

3 On the day of 19', the defendant erected upon his said plot a slaughter-house, and still maintains the same, and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff]

[4 In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same]

[As in paras 4 and 5 of Form No 1]

7 The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance

 No 37

PUBLIC NUISANCE

(Title)

A B, the above-named plaintiff, states as follows —

1 The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act

2 The plaintiff has obtained the consent in writing of the Advocate General [or of the Collector or other officer appointed in this behalf] to the institution of this suit

[As in paras 4 and 5 of Form No 1]

5 The

(The First Schedule Appendix A —Pleadings)

5 The plaintiff claims—

- (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road
- (2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid

—————
No 38

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE
(Title)

A B , the above-named plaintiff, states as follows —

[As in Form No 27]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid

—————
No 39

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION
(Title)

A B , the above-named plaintiff, states as follows —

1 Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter], and of which no duplicate exists [or state any facts showing that the property is of a kind that cannot be replaced by money]

2 On the _____ day of _____ 19 _____ , he deposited the same for safe-keeping with the defendant

3 On the _____ day of _____ 19 _____ he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same

(The First Schedule Appendix A —Pleadings)

4 The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up

5 No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting]

[As in paras 4 and 5 of Form No 1]

8 The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting],
- (2) that he be compelled to deliver the same to the plaintiff

No 40

INTERPLEADER

(Title)

A B , the above-named plaintiff, states as follows —

1 Before the date of the claims hereinafter mentioned, G H deposited with the plaintiff [*describe the property*] for [safe-keeping]

2 The defendant C D claims the same [under an alleged assignment thereof to him from G H]

3 The defendant E F also claims the same [under an order of G H transferring the same to him]

4 The plaintiff is ignorant of the respective rights of the defendants

5 He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct

6 The suit is not brought by collusion with either of the defendants

[As in paras 4 and 5 of Form No 1]

9 The

(The First Schedule Appendix A —Pleadings)

9 The plaintiff claims—

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto,
- (2) that they be required to interplead together concerning their claims to the said property,
- [(3) that some person be authorized to receive the said property pending such litigation,]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto

No 41

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS

(Title)

A B the above-named plaintiff, states as follows —

1 E F, late of _____, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of

[here insert nature of debt and security, if any]

2 E F died on or about the _____ day of _____

By his last will, dated the _____ day of _____ he appointed C D his executor [*or devised his state in trust, etc., or died intestate, as the case may be*]

3 The will was proved by C D [*or letters of administration were granted, etc*]

4 The defendant has possessed himself of the moveable [*and immoveable, or the proceeds of the immoveable*] property of E F and has not paid the plaintiff his debt

[As in paras 4 and 5 of Form No 1]

7 The plaintiff claims that an account may be taken of the moveable [*and immoveable*] property of E F, deceased and that the same may be administered under the decree of the Court

No 42

(The First Schedule Appendix A --Pleadings)

No 42

ADMINISTRATION BY SPECIFIC LEGATEE

(Title)

[Alter Form No 41 thus]—

[Omit paragraph 1 and commence paragraph 2] E F, late of , died on or about the day of

By his last will, dated the day of he appointed C D his executor and bequeathed to the plaintiff [here state the specific legacy]

For paragraph 4 substitute—

The defendant is in possession of the moveable property of E F, and, amongst other things, of the said [here name the subject of the specific bequest]

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest], or that, etc

No 43

ADMINISTRATION BY PECUNIARY LEGATEE

(Title)

[Alter Form No 41 thus]—

[Omit paragraph 1 and substitute for paragraph 2] E F, late of , died on or about the day of

By his last will, dated the day of he appointed C D his executor, and bequeathed to the plaintiff a legacy of rupees

In paragraph 4 substitute "legacy" for "debt"

Another form

(Title)

E F, the above-named plaintiff, states as follows —

1 A B of K in the died on the day of

By his last will, dated the day of he

(The First Schedule Appendix A —Pleadings)

he appointed the defendant and *M N* [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life, and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid

2 The will was proved by the defendant on the _____ day of _____ The plaintiff has not been married

3 The testator was at his death entitled to moveable and immovable property, the defendant entered into the receipt of the rents of the immovable property and got in the moveable property, he has sold some part of the immovable property

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims—

- (1) to have the moveable and immovable property of *A B* administered in this Court, and for that purpose to have all proper directions given and accounts taken,
- (2) such further or other relief as the nature of the case may require

No 44

EXECUTION OF TRUSTS

(Title)

A B, the above-named plaintiff, states as follows —

1 He is one of the trustees under an instrument of settlement bearing date on or about the _____ day of _____ made upon the marriage of *E F* and *G H*, the father and mother of the defendant [*or an instrument of transfer of the estate and effects of E F for the benefit of C D*, the defendant, and the other creditors of *E F*]

2 *A B*

(The First Schedule Appendix A —Pleadings)

2 *A B* has taken upon himself the burden of the said trust, and is in possession of [*or of the proceeds of*] the moveable and immoveable property transferred by the said instrument

3 *C D* claims to be entitled to a beneficial interest under the instrument

[As in paras 4 and 5 of Form No 1]

6 The plaintiff is desirous to account for all the rents and profits of the said immoveable property [*and the proceeds of the sale of the said, or of part of the said, immoveable property, or moveable or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust*], and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C D*, the defendant, and all other persons who may be interested in such administration, in the presence of *C D* and such other persons so interested as the Court may direct, or that *C D* may show good cause to the contrary

[N B —Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee]

No 45

FORECLOSURE OR SALE

(Title)

A B, the above-named plaintiff, states as follows —

1 The plaintiff is mortgagee of lands belonging to the defendant

2 The following are the particulars of the mortgage —

- (a) (date),
- (b) (names of mortgagor and mortgagee),
- (c) (sum secured),
- (d) (rate of interest),
- (e) (property subject to mortgage),
- (f) (amount now due),

(g) if

(The First Schedule Appendix A —Pleadings)

(g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims)

(If the plaintiff is mortgagee in possession, add)

3 The plaintiff took possession of the mortgaged property on the _____ day of _____ and is ready to account as mortgagee in possession from that time

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims—

(1) payment, or in default [sale or] foreclosure [and possession],

[Where Order 34, rule 6, applies]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance

No 46

REDEMPTION

(Title)

A B , the above-named plaintiff, states as follows —

1 The plaintiff is mortgagor of lands of which the defendant is mortgagee

2 The following are the particulars of the mortgage —

(a) (date),

(b) (names of mortgagor and mortgagee),

(c) (sum secured),

(d) (rate of interest),

(e) (property subject to mortgage),

(f) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims)

(If the defendant is mortgagee in possession, add)

3 The defendant has taken possession [or has received the rents] of the mortgaged property

[As in paras 4 and 5 of Form No 1]

(The First Schedule Appendix A —Pleadings)

6 The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof]

No 47

SPECIFIC PERFORMANCE (No 1)

(Title)

A B, the above-named plaintiff, states as follows —

1 By an agreement dated the _____ day of _____ and signed by the defendant, he contracted to buy or [or sell to] the plaintiff certain immoveable property therein described and referred to, for the sum of _____ rupees

2 The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so

3 The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice

[As in paras 4 and 5 of Form No 1]

6 The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit

No 48

SPECIFIC PERFORMANCE (No 2)

(Title)

A B, the above-named plaintiff, states as follows —

1 On the _____ day of _____ 19____, the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed

The defendant was absolutely entitled to the immoveable property described in the agreement

2 On

(The First Schedule Appendix A—Pleadings)

2 On the _____ day of _____ 19____, the plaintiff tendered _____ rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument

3 On the _____ day of _____ 19____, the plaintiff again demanded such transfer [Or the defendant refused to transfer the same to the plaintiff]

4 The defendant has not executed any instrument of transfer

5 The plaintiff is still ready, and willing to pay the purchase-money of the said property to the defendant

[As in paras 4 and 5 of Form No 1]

8 The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument *[following the terms of the agreement]*,

(2) _____ rupees compensation for withholding the same

No 49

PARTNERSHIP

(Title)

A B, the above-named plaintiff, states as follows —

1 He and C D, the defendant, have been for _____ years [*or months*] past carrying on business together under articles of partnership in writing [*or under a deed, or under a verbal agreement*]

2 Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners [*Or the defendant has committed the following breaches of the partnership articles —*

(1)

(2)

(3)

]

[As in paras 4 and 5 of Form No 1]

(The First Schedule Appendix A —Pleadings)

5 The plaintiff claims—

- (1) dissolution of the partnership,
- (2) that accounts be taken
- (3) that a receiver be appointed

(N B —In suits for the winding-up of any partnership, omit the claim for dissolution, and instead insert a paragraph stating the facts of the partnership having been dissolved)

(4) WRITTEN STATEMENTS

General defences

| | |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Denial | The defendant denies that <i>(set out facts)</i> The defendant does not admit that <i>(set out facts)</i> The defendant admits that but says that |
| Protest | The defendant denies that he is a partner in the defendant firm of The defendant denies that he made the contract alleged or any contract with the plaintiff The defendant denies that he contracted with the plaintiff as alleged or at all The defendant admits assets but not the plaintiff's claim The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them |
| Limitation | The suit is barred by article or article of the second schedule to the ¹ Indian Limitation Act, 1877 xv of |
| Jurisdiction | The Court has no jurisdiction to hear the suit on the ground that <i>(set forth the grounds)</i> On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action |
| Insolvency | The defendant has been adjudged an insolvent The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver |

The

¹ See now the Indian Limitation Act, 1908 (9 of 1908)

(The First Schedule Appendix A —Pleadings)

The defendant was a minor at the time of making the alleged contract

The defendant as to the whole claim (or as to Rs part of the money claimed, or as the case may be) has paid into Court Rs and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid)

The performance of the promise alleged was remitted the (date) on Performance remitted

The contract was rescinded by agreement between the plaintiff and defendant the Rescission.

The plaintiff's claim is barred by the decree in suit (give the reference) Resjudicata.

The plaintiff is estopped from denying the truth of (insert statements as to which estoppel is claimed) because (here state the facts relied on as creating the estoppel) Estoppel

Since the institution of the suit that is to say, on the day of (set out facts) Ground of defence subsequent to institution of suit.

No 1

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED

- 1 The defendant did not order the goods
- 2 The goods were not delivered to the defendant.
- 3 The price was not Rs

[or]

4 }
 5 } Except as to Rs , same as } 1.
 6 } } 2
 } } 3

7 The defendant [or A B, the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C D, the plaintiff's agent] on the day of 19

8 The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19

No 2

(The First Schedule Appendix A —Pleadings)

No 2

DEFENCE IN SUITS ON BONDS

- 1 The bond is not the defendant's bond
- 2 The defendant made payment to the plaintiff on the day according to the condition of the bond
- 3 The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond

No 3

DEFENCE IN SUITS ON GUARANTEES

- 1 The principal satisfied the claim by payment before suit
- 2 The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement

No 4

DEFENCE IN ANY SUIT FOR DEBT

- 1 As to Rs 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff

Particulars are as follows —

| | Rs |
|---------------------|-----|
| 1907, January, 25th | 150 |
| „ February, 1st | 50 |
| Total | 200 |

- 2 As to the whole [or as to Rs _____, part of the money claimed] the defendant made tender before suit of Rs _____ and has paid the same into Court

No 5

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING

- 1 The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under

(The First Schedule Appendix A —Pleadings)

under the charge or control of the defendant's servants The carriage belonged to _____ of _____ Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses, and the person under whose charge and control the said carriage was, was the servant of the said _____

2 The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace

3 The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it

4 The defendant does not admit the statements contained in the third paragraph of the plaint

 No 6

DEFENCE IN ALL SUITS FOR WRONG

1 Denial of the several acts [or matters] complained of

 No 7

DEFENCE IN SUITS FOR DETENTION OF GOODS

1 The goods were not the property of the plaintiff

2 The goods were detained for a lien to which the defendant was entitled

Particulars are as follows —

1907, May 3rd To carriage of the goods claimed from
Delhi to Calcutta —

45 maunds at Rs 2 per maund Rs 90

 No 8

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT

1 The plaintiff is not the author [*assignee, etc*]

2 The book was not registered

3 The defendant did not infringe

(The First Schedule Appendix A —Pleadings)

No 9

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK

- 1 The trade mark is not the plaintiff's
- 2 The alleged trade mark is not a trade mark
- 3 The defendant did not infringe

No 10

DEFENCES IN SUITS RELATING TO NUISANCES

1 The plaintiff's rights are not ancient [or deny his other alleged prescriptive rights]

2 The plaintiff's rights will not be materially interfered with by the defendant's buildings

3 The defendant denies that he or his servants pollute the water [or do what is complained of]

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so and must state the grounds of the claim, i.e., whether by prescription, grant or what]

4 The plaintiff has been guilty of laches of which the following are particulars —

1870 Plaintiff's mill began to work

1871 Plaintiff came into possession

1883 First complaint

5 As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff *[If other grounds are relied on, they must be stated, e.g., limitation as to past damage]*

No 11

DEFENCE TO SUIT FOR FORECLOSURE

- 1 The defendant did not execute the mortgage
- 2 The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied)

3 The

(The First Schedule Appendix A —Pleadings)

- 1877 3 The suit is barred by article of the second
 schedule to the ¹Indian Limitation Act, 1877
- 4 The following payments have been made, viz —
- | | |
|--------------------|-------|
| | Rs |
| (Insert date) ———, | 1,000 |
| (Insert date) ———, | 500 |
- 5 The plaintiff took possession on the of
 , and has received the rents ever since
- 6 That plaintiff released the debt on the of
- 7 The defendant transferred all his interest to A B by
 a document, dated

No 12

DEFENCE TO SUIT FOR REDEMPTION

1877. 1 The plaintiff's right to redeem is barred by article
 Act, 1877 of the second schedule to the ¹Indian Limitation
- 2 The plaintiff transferred all interest in the property to
 A B
- 3 The defendant, by a document dated the day
 of transferred all his interest in the mortgage-debt
 and property comprised in the mortgage to A B
- 4 The defendant never took possession of the mortgaged
 property, or received the rents thereof

(If the defendant admits possession for a time only, he
 should state the time, and deny possession beyond what he
 admits)

No 13

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE

- 1 The defendant did not enter into the agreement
- 2 A B was not the agent of the defendant (if alleged
 by plaintiff)
- 3 The

¹ See now the Indian Limitation Act, 1908 (9 of 1908).

(The First Schedule Appendix A —Pleadings)

3 The plaintiff has not performed the following conditions—(*Conditions*) -

4 The defendant did not—(*alleged acts of past performance*)

5 The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(*State why*)

6 The agreement is uncertain in the following respects—(*State them*)

7 (or) The plaintiff has been guilty of delay

8 (or) The plaintiff has been guilty of fraud (or misrepresentation)

9 (or) The agreement is unfair

10 (or) The agreement was entered into by mistake

11 The following are particulars of (7), (8), (9), (10) (or as the case may be)

12 The agreement was rescinded under Conditions of Sale, No 11 (or by mutual agreement)

(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e g, the Indian Limitation Act, accord and satisfaction, release, fraud, etc)

No 14

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1 A B's will contained a charge of debts, he died insolvent, he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs _____, and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs _____

2 The defendant applied the whole of the said sums and the sum of Rs _____ which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator

(The First Schedule Appendix A —Pleadings)

3 The defendant made up his accounts and sent a copy thereof to the plaintiff on the _____ day of 19____, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer

4 The defendant submits that the plaintiff ought to pay the costs of this suit

 No 15

PROBATE OF WILL IN SOLEMN FORM

1 The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865¹ [or of the Hindu Wills Act, 1870¹]

2 The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding X of 1865
XXI of 1870.

3 The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant]

4 The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [state the nature of the fraud]

5 The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [or of the contents of the residuary clause in the said will, as the case may be]

6 The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof

The defendant claims—

- (1) that the Court will pronounce against the said will and codicil propounded by the plaintiff
- (2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law

 No 16

¹ See now the Indian Succession Act, 1925 (39 of 1925)

(The First Schedule Appendix A —Pleadings)

No 16

PARTICULARS (O 6, r 5)

(Title of suit)

The following are the particulars of (here state the matters in respect of which particulars have been ordered) delivered pursuant to the order of the of
Particulars
(Here set out the particulars ordered in paragraphs if necessary)

APPENDIX B.

(The First Schedule Appendix B —Process)

APPENDIX B

PROCESS

No 1

SUMMONS FOR DISPOSAL OF SUIT (O 5, rr 1, 5)

(Title)

To

[Name, description and place of residence]

WHIBREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 , at o'clock in the noon, to answer the claim, and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this day of 19

Judge

NOTICE —1 Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses

(The First Schedule Appendix B —Process)

2 If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both

No 2

SUMMONS FOR SETTLEMENT OF ISSUES (O 5, rr 1, 5)

(Title)

To

[Name, description and place of residence]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 , at o'clock in the noon, to answer the claim, and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this day of 19

Judge

NOTICE —1 Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses

2 If

(The First Schedule Appendix B—Process)

2 If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both

No 3

SUMMONS TO APPEAR IN PERSON (O 5, r 3)

(Title)

To

[Name, description and place of residence]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person on the _____ day of _____ 19____, at _____ o'clock in the _____ noon, to answer the claim, and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this
day of _____ 19____

Judge

No 4

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

(O 37, r 2)

(Title)

To

[Name, description and place of residence]

WHEREAS _____ has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs _____, balance of principal and interest due to

him

321

(The First Schedule Appendix B —Process)

him as the _____ of a _____ of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs _____ and the sum of Rs _____ for costs ¹[together with such interest, if any, from the date of the institution of the suit as the Court may order]

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this
day of _____ 19 .

Judge

No 5

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE
ADDED AS CO-PLAINTIFF (O 1, r 10)

(Title)

To

[Name, description and place of residence]

WHEREAS _____ has instituted the above suit against _____ for _____ and, whereas it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved

Take notice that you should on or before the _____ day of _____ 19 _____ signify to this Court whether you consent to be so added

GIVEN under my hand and the seal of the Court, this
day of _____ 19

No 6

¹These words were inserted by s 4 of the Negotiable Instruments (Interest) Act, 1926 (30 of 1926)

(The First Schedule Appendix B—Process)

No 6

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT (O 22, r 4)

(Title)

To

WHEREAS the plaintiff instituted a suit in this Court on the day of 19 against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said , deceased, and desiring that you be made the defendant in his stead

You are hereby summoned to attend in this Court on the day of 19 at AM to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 7

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT (O 5, r 21)

(Title)

WHEREAS it is stated that

Defendant in the above suit is at present residing in . It is ordered that a summons returnable on the day of 19 , be forwarded to the Court of for service on the said Defendant with a duplicate of this proceeding Witness

The 323

(The First Schedule Appendix B —Process)

The court-fee of _____ chargeable in respect to the
summons has been realized in this Court in stamps

Dated _____ 19 _____

Judge

No 8

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A
PRISONER (O 5, r 24)

(Title)

To

The Superintendent of the Jail at

UNDER the provisions of Order V, rule 24, of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you

Judge

No 9

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A
PUBLIC SERVANT OR SOLDIER (O 5, r 27, 28)

(Title)

To

UNDER the provisions of Order V, rule 27 (or 28, as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you

Judge

No 10.

(The First Schedule Appendix B—Process)

No 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT
(O 5, r 23)

(Title)

Read proceeding from the forwarding
for service on Court of that
in Suit No of 19 of that

Read Serving Officer's endorsement stating that the
and proof of the above having been duly taken by me
on the oath of and
it is ordered that the be
returned to the with
a copy of this proceeding

Judge

NOTE—This form will be applicable to process other than summons,
the service of which may have to be effected in the same manner

No 11

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A
SUMMONS OR NOTICE (O 5, r 18)

(Title)

The Affidavit of , son of .

I make oath
affirm

and say as follows —

(1) I am a process-server of this Court

(2) On the day of 19 I received a
summons issued by the Court of
notice

in Suit No
of 19 in the said Court, dated the day of
19 for service on

(3) The

(The First Schedule Appendix B—Process)

(3) The said _____ was at the time personally known to me, and I served the said summon notice on him on the _____ day of 19____ at about _____ o'clock in the noon at _____ by tendering a copy thereof to him and requiring his signature to the original summons notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

or,

(3) The said _____ not being personally known to me accompanied me to _____ and pointed out to me a person whom he stated to be the said _____

, and I served the said summons notice on him on the _____ day of 19____, at about _____ o'clock in the noon at _____ by tendering a copy thereof to him and requiring his signature to the original summons notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

or,

(3) The said _____ and the house in which he ordinarily resides being personally known to me, I went to the said house, in _____ and there on the day of _____ 19____, at about _____ o'clock in the noon, I did not find the said _____

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17

(b) Signature of process server

or,

(3) One

(The First Schedule Appendix B —Process)

(3) One _____ accompanied me to _____ and there pointed out to me _____ which he said was the house in which _____ ordinarily resides I did not find the said there

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17

(b) Signature of process server

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service

Sworn by the said _____ before me this Affirmed day of _____ 19

Empowered under section 139 of the Code of Civil Procedure, 1908, to administer the oath to deponents

No 12

NOTICE TO DEFENDANT (O 9, r 6)

(Title)

To

[Name, description and place of residence]

WHEREAS this day was fixed for the hearing of the above suit and summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons,

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same, in default of your

appearance

(The First Schedule Appendix B —Process)

appearance on the day last mentioned the suit will be heard and determined in your absence

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 13

SUMMONS TO WITNESS (O 16, rr 1, 5)

(Title)

To

WHEREAS your attendance is required to on behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of 19 . at o'clock in the forenoon, and to bring with you [or to send to this Court]

A sum of Rs , being your travelling and other expenses and subsistence allowance for one day, is herewith sent . If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

NOTICE —(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid

(2) If you are detained beyond the day aforesaid, a sum of Rs will be tendered to you for each day's attendance beyond the day specified

No 14.

(The First Schedule Appendix B—Process)

No 14

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS
(O 16, r 10)

(Title)

To

• WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the day of 19
at o'clock in the forenoon and from day to day until he shall have leave to depart, and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 15

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS
(O 16, r 10)

(Title)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the day of 19
at o'clock in the forenoon, and from day to day until he shall have leave to depart, and if the witness fails

to

(The First Schedule Appendix B—Process)

to attend on the day and hour aforesaid he will be dealt with according to law

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 16

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS

(O 16, r 10)

(Title)

To

The Bailiff of the Court

WHEREAS the witness cited by

has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 17

WARRANT OF ARREST OF WITNESS (O 16, r 10)

(Title)

To

The Bailiff of the Court

WHEREAS has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons], You are hereby ordered to arrest and bring the said before the Court

You

(The First Schedule Appendix B—Process)

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this day of 19 Judge

No 18

WARRANT OF COMMITTAL (O 16, r 16)

(Title)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (or defendant) in the above-named suit has made application to this Court that security be taken for the appearance of to give evidence (or to produce a document), on the day of 19, and whereas the Court has called upon the said to furnish such security, which he has failed to do, This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 19.

WARRANT OF COMMITTAL (O 16, r. 18)

(Title)

To

The Officer in charge of the Jail at

WHEREAS, whose attendance is required before this Court in the above-named case to give evidence

(The First Schedule Appendix B —Process)

evidence (or to produce a document), has been arrested and brought before the Court in custody, and whereas owing to the absence of the plaintiff (or defendant), the said

cannot give such evidence (or produce such document), and whereas the Court has called upon the said

to give security for his appearance on the

day of 19 at

which he has failed to do. This is to

require you to receive the said into your

custody in the civil prison and to produce him before this

Court at on the day of

19

GIVEN under my hand and the seal of the Court, this

day of 19

Judge

APPENDIX C.

(The First Schedule Appendix C—Discovery, Inspection and Admission)

APPENDIX C

DISCOVERY, INSPECTION AND ADMISSION

No 1

ORDER FOR DELIVERY OF INTERROGATORIES (O 11, r 1)

In the Court of

Civil Suit No of 19

A B Plaintiff,

against

C D, E F and G H Defendants.

Upon hearing and upon reading the affidavit of filed the day of 19, It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XI, rule 8, and that the costs of this application be

No 2

INTERROGATORIES (O 11, r 4)

(Title as in No 1, supra)

Interrogatories on behalf of the above-named [plaintiff or defendant C D] for the examination of the above-named [defendants E F and G H or plaintiff]

1 Did not, etc

2 Has not, etc

etc, etc, etc

[The defendant E F is required to answer the interrogatories numbered]

[The defendant G H is required to answer the interrogatories numbered]

(The First Schedule Appendix C—Discovery, Inspection and Admission)

No 3

ANSWER TO INTERROGATORIES (O 11, r 9)

(Title as in No 1, supra)

The answer of the above-named defendant *E F* to the interrogatories for his examination by the above-named plaintiff

In answer to the said interrogatories, I, the above-named *E F*, make oath and say as follows —

- 1 } Enter answers to interrogatories in paragraphs
 2 } numbered consecutively
- 3 I object to answer the interrogatories numbered on the ground that [*state grounds of objection*]

 No 4

ORDER FOR AFFIDAVIT AS TO DOCUMENTS (O 11, r 12)

(Title as in No 1, supra)

Upon hearing

It is ordered that the _____ do within _____ days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be _____

 No 5

AFFIDAVIT AS TO DOCUMENTS (O 11, r 13)

(Title as in No 1, supra)

I, the above-named defendant *C D*, make oath and say as follows —

1 I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto

2 I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*]

3 I have

(The First Schedule Appendix C—Discovery, Inspection and Admission)

3 I have had but have not now in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto

4 The last-mentioned documents were last in my possession or power on [*state when and what has become of them and in whose possession they now are*]

5 According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto

 No 6

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION

(O 11, r 14)

(Title as in No 1, supra)

Upon hearing _____ and upon reading the affidavit of _____ filed the _____ day of _____ 19 ____ It is ordered that the _____ do, at all reasonable times, on reasonable notice, produce at _____, situate at _____, the following documents, namely, _____, and that the _____ be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be _____

 No 7

NOTICE TO PRODUCE DOCUMENTS (O 11, r 16)

(Title as in No 1, supra)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred

to

(The First Schedule Appendix C—Discovery, Inspection and Admission)

to in your [plaint or written statement or affidavit dated the day of 19]

[Describe documents required]

X Y, Pleader for the

To Z, Pleader for the

No 8

NOTICE TO INSPECT DOCUMENTS (O 11, r 17)

(Title as in No 1, supra)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [except the documents numbered in that notice] at [insert place of inspection] on Thursday next, the instant, between the hours of 12 and 4 o'clock

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the day of 19, on the ground that [state the ground] —

No 9

NOTICE TO ADMIT DOCUMENTS (O 12, r 3)

(Title as in No 1, supra)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent, at on between the hours of

and the defendant [or plaintiff], is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been that such as are specified as copies are true copies, and such documents as are stated to have been served, sent, or delivered were so served, sent or delivered,

respectively

(The First Schedule Appendix C—Discovery, Inspection and Admission)

respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit

G H, pleader [or agent] for plaintiff
[or defendant]

To E F, pleader [or agent] for defendant [or plaintiff]
[Here describe the documents and specify as to each document whether it is original or a copy]

No 10

NOTICE TO ADMIT FACTS (O 12, r 5)

(Title as in No 1, supra)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified, and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit

G H, pleader [or agent] for plaintiff [or defendant]

To E F, pleader [or agent] for defendant [or plaintiff]

The facts, the admission of which is required, are—

- 1 That M died on the 1st January, 1890
- 2 That he died intestate
- 3 That N was his only lawful son
- 4 That O died on the 1st April, 1896
- 5 That O was never married

No 11

ADMISSION OF FACTS PURSUANT TO NOTICE (O 12, r 5)

(Title as in No 1, supra)

The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively
hereunder

(The First Schedule Appendix C—Discovery, Inspection and Admission)

hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant, or party requiring the admission]

E F, pleader [or agent] for defendant [or plaintiff]

To G H, pleader [or agent] for plaintiff [or defendant]

| Facts admitted | Qualifications or limitations, if any, subject to which they are admitted |
|---------------------------------------|---------------------------------------------------------------------------|
| 1 That M died on the 1st January 1890 | 1 |
| 2 That he died intestate | 2 |
| 3 That N was his lawful son | 3 But not that he was his only lawful son |
| 4 That O died | 4 But not that he died on the 1st April, 1896 |
| 5 That O was never married | 5 |

No 12

NOTICE TO PRODUCE (GENERAL FORM) (O 12, r 8)

(Title as in No 1, supra)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G H, pleader [or agent] for plaintiff [or defendant].

To E F, pleader [or agent] for defendant [or plaintiff]

APPENDIX D.

(The First Schedule Appendix D —Decrees)

APPENDIX D

DECREES

No 1

DECREE IN ORIGINAL SUIT (O 20, rr 6, 7)

(Title)

Claim for

THIS suit coming on this day for final disposal before
in the presence of
for the plaintiff and of for the defendant, it
is ordered and decreed that
and that the sum of Rs be paid by the
to the on account of the costs of this suit,
with interest thereon at the rate of per cent per annum
from this date to date of realization

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

Costs of Suit

| Plaintiff | | | | Defendant | | | |
|----------------------------------|----|---|---|--------------------------------|----|---|---|
| | Rs | A | P | | Rs | A | P |
| 1 Stamp for plaint | | | | Stamp for power | | | |
| 2 Do for power | | | | Do for petition | | | |
| 3 Do for exhibits | | | | Pleader's fee . | | | |
| 4 Pleader's fee on Rs | | | | Subsistence for wit- nesses | | | |
| 5 Subsistence for wit- nesses | | | | Service of process | | | |
| 6 Commissioner's fee | | | | Commissioner's fee | | | |
| 7 Service of process | | | | | | | |
| Total | | | | Total | | | |

No 2

(The First Schedule Appendix D—Decrees)

No 2

SIMPLE MONEY DECREE (Section 34)

(Title)

Claim for

THIS suit coming on this day for final disposal before
 in the presence of
 for the plaintiff and of for the defend-
 ant, it is ordered that the do pay to the
 the sum of Rs with interest thereon at the rate of
 per cent per annum from to the date of realization of the
 said sum and do also pay Rs , the costs of this suit,
 with interest thereon at the rate of per cent per annum
 from this date to the date of realization

GIVEN under my hand and the seal of the Court, this
 day of 19

Judge

Costs of Suit

| Plaintiff | | | | Defendant | | | |
|----------------------------------|----|---|---|--------------------------------|----|---|---|
| | Rs | A | P | | Rs | A | P |
| 1 Stamp for plaint | | | | Stamp for power | | | |
| 2 Do for power | | | | Do for petition | | | |
| 3 Do for exhibits | | | | Pleader's fee | | | |
| 4 Pleader's fee on Rs | | | | Subsistence for wit- nesses | | | |
| 5 Subsistence for wit- nesses | | | | Service of process | | | |
| 6 Commissioner's fee | | | | Commissioner's fee | | | |
| 7 Service of process | | | | | | | |
| Total | | | | Total | | | |

(The First Schedule Appendix D—Decrees)

1|No 3

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2—Where accounts are directed to be taken)

(Title)

This suit coming on this _____ day, etc., It is hereby ordered and decreed that it be referred to _____ as the Commissioner to take the accounts following—

- (i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable),
- (ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received,
- (iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2 And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted

¹ Forms 3 to 11 were substituted by s 8 and Sch of the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929)

(The First Schedule Appendix D—Decrees)

adjusted against any sums paid by the plaintiff under clause (u) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs for the costs of the suit awarded to the plaintiff,

(u) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to the

defendant

(The First Schedule Appendix D —Decrees)

defendant quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

No 3A

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2—Where the Court declares the amount due)

(Title)

This suit coming on this day, etc . It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs for the costs of this suit awarded to the plaintiff, making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court of the said sum of Rs ,

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges

and

(The First Schedule Appendix D—Decrees)

- (ii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2 And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the _____ day of _____, and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

- (i) that the defendant do pay into Court on or before the _____ day of _____ or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs _____ for the costs of the suit awarded to the plaintiff,

(ii) that,

(The First Schedule Appendix D --Decrees)

(u) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property .

6 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same

(The First Schedule Appendix D—Decrees)

7 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

 No 5A

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4—When the Court declares the amount due)

(Title)

This suit coming on this day, etc., It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs for the costs of the suit awarded to the plaintiff, making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

- (1) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, the said sum of Rs ,
- (2) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and

expenses

(The First Schedule Appendix D.—Decrees)

expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property

4 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same

5 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the

plaintiff

(The First Schedule Appendix D —Decrees)

plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

No 6

FINAL DECREE FOR SALE

(Order XXXIV, rule 5)

(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property

2 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent

interest

(The First Schedule Appendix D —Decrees)

interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same

No 7

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED

{Order XXXIV, rule 7—Where accounts are directed to be taken)

(Title)

This suit coming on this day, etc , It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following —

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable),
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received,
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his

failure

(The First Schedule Appendix D—Decreets)

failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2 It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due and the sum of Rs for the costs of the suit awarded to the defendant,

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall,

if

(The First Schedule Appendix D—Decrees)

if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

No 7A

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED

(Order XXXIV, rule 7—Where accounts are directed to be taken)

(Title)

This suit coming on this _____ day, etc., It is hereby ordered and decreed that it be referred to _____ as the Commissioner to take the accounts following—

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable),

(ii) an

858

12

(The First Schedule Appendix D—Decrees)

- (u) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received,
- (uu) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent per annum),
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed

2 And it is hereby further ordered and decreed that any amount received under clause (u) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (uu) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal

3 And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make

4 And

(The First Schedule Appendix D —Decrees)

4 And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of _____ or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs _____ for the costs of the suit awarded to the defendant,

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

5 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

6 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant

(The First Schedule Appendix D—Decrees)

under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same

7 And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

 No 7B

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7—Where the Court declares the amount due)

(Title)

This suit coming on this day etc, It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs - for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage security together with interest thereon, and the sum of Rs for the costs of the suit awarded to the defendant, making in all the sum of Rs

2 And

(The First Schedule Appendix D —Decrees)

2 And it is hereby ordered and decreed as follows —

(i) that the plaintiff do pay into Court on or before the day of _____ or any later date up to which time for payment may be extended by the Court the said sum of Rs _____,

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property, and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

(The First Schedule Appendix D—Decrees)

No 7C

**PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF
PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED**

(Order XXXIV, rule 7—Where the Court declares the
amount due)

(Title)

This suit coming on this day, etc , It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs for the cost of this suit awarded to the defendant, making in all the sum of Rs

2 And it is hereby ordered and decreed as follows —

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs ,..

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, re convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created

(The First Schedule Appendix D—Decrees)

created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property

3 And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold, and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property

4 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same

5 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

Description of the mortgaged property

(The First Schedule Appendix D—Decrees)

No 7D

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON
DEFAULT OF PAYMENT BY MORTGAGOR

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree in this suit on the
day of and further
orders (if any) dated the day of ,
and the application of the defendant dated the
day of for a final decree and after hearing
the parties, and it appearing that the payment as directed by
the said decree and orders has not been made by the plaintiff
or any person on his behalf or any other person entitled to
redeem the mortgage

It is hereby ordered and decreed that the plaintiff and all
persons claiming through or under him be and they are hereby
absolutely debarred and foreclosed of and from all right of
redemption of and in the property in the aforesaid preliminary
decree mentioned* [and (if the plaintiff be in possession of the
said mortgaged property) that the plaintiff shall deliver to the
defendant quiet and peaceable possession of the said mortgaged
property]

2 And it is hereby further declared that the whole of the
liability whatsoever of the plaintiff up to this day arising from
the said mortgage mentioned in the plaint or from this suit is
hereby discharged and extinguished

No 7E

FINAL DECREE FOR SALE IN A REDEMPTION SUIT ON
DEFAULT OF PAYMENT BY MORTGAGOR

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree passed in this suit
on the day of and further orders (if
any) dated the day of , and the applica-
tion of the defendant dated the day of for a final
decree

* Words not required to be deleted

(The First Schedule Appendix D --Decrees)

decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property

2 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interests as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same

No 7F

FINAL DECREE IN A SUIT FOR FORFCLOSURE, SALE OR REDEMPTION
WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE

(Order XXXIV, rules 3, 5 and 8)

(Title)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or , the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of , It is hereby ordered and decreed that —

- (i) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor *[or, as the

case

* Words not required to be deleted

(The First Schedule Appendix D—Decrees)

2 It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No 2 * [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively —]

3 And it is hereby ordered and decreed as follows —

(i) (a) that defendants or one of them do pay into Court on or before the _____ day of _____ or any later date up to which time for payment has been extended by the Court the said sum of Rs _____ due to the plaintiff, and

(b) that defendant No 1 do pay into Court on or before the _____ day of _____ or any later date up to which time for payment has been extended by the Court the said sum of Rs _____ due to defendant No 2, and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plant mentioned, and all such documents shall be delivered over to the defendant No _____ (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or

this

* Words not required to be deleted

(The First Schedule Appendix D—Decrees)

this suit and shall, if so required, deliver up to the defendant No (who has made the payment) quiet and peaceable possession of the said property

(Similar declarations to be introduced, if defendant No 1 pays the amount found or declared to be due to defendant No 2 with such variations as may be necessary having regard to the nature of his mortgage)

4 And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

- (i) **[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property, or
- (ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be so'd, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property, and
- (iii) **[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent

interest

* Words not required to be deleted

(The First Schedule Appendix D—Decrees)

interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No 2, and that if any balance be left, it shall be paid to the defendant No 1 or other persons entitled to receive the same, and

- (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No 2, the plaintiff or defendant No 2 or both of them as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amounts remaining due to them respectively

5 And it is hereby further ordered and decreed—

- (a) that if defendant No 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No 1 makes default in the payment of the said amount, defendant No 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

*[(i) that defendant No 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No 2 quiet and peaceable possession of the said property,] or

*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property,]

and

* Words not required to be deleted

(The First Schedule Appendix D—Decrees)

and (b) (if on the application of defendant No 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No 1 arising from the plaintiff's mortgage or from the mortgage of defendant No 2 or from this suit shall be deemed to have been discharged and extinguished

6 And it is hereby further ordered and decreed **[in the case where a sale is ordered under clause 5 above]*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount, and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No 1 or other persons entitled to receive the same, and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No 2's mortgage, defendant No 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amount of the balance

7 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

* Words not required to be deleted

(The First Schedule Appendix D —Decrees)

SCHEDULE

Description of the mortgaged property

No 10

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE

Plaintiff

2nd Mortgagee,

vs

Defendant No 1

Mortgagor,

Defendant No 2

1st Mortgagee [

(Order XXXIV, rules 2, 4 and 7)

(Title)

The suit coming on this day, etc , It is hereby declared that the amount due to defendant No 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No 2 in respect of the mortgage-security with interest thereon and the sum of Rs for the costs of this suit awarded to defendant No 2, making in all the sum of Rs

(Similar declarations to be introduced with regard to the amount due from defendant No 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit)

2 It is further declared that defendant No 2 is entitled to payment of the amount due to him in priority to the plaintiff * [or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively —]

3 And it is hereby ordered and decreed as follows —

(i) (a) that the plaintiff or defendant No 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs due to defendant No 2, and

(b) that

* Words not required to be deleted

(The First Schedule Appendix D—Decrees)

- (b) that defendant No 1 do pay into Court on or before the
 the day of
 or any later date up to which time for payment has
 been extended by the Court the said sum of
 Rs due to the plaintiff, and
- (ii) that, on payment of the sum declared due to defendant No 2 by the plaintiff and defendant No 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No 1 (whoever has made the payment), or to such person as he appoints, and defendant No 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No 1 (whoever has made the payment) quiet and peaceable possession of the said property

(Similar declarations to be introduced, if defendant No 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage)

4 And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No 2, defendant No 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

- (i) **[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-decd is foreclosure and*
not

* Words not required to be deleted.

(The First Schedule Appendix D—Decreets)

not sale] that the plaintiff and defendant No 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No 2 quiet and peaceable possession of the property, or

- (ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold, and that for the purposes of such sale defendant No 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property, and
- (iii) **[in the case where a sale is ordered under clause 4 (u) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No 1 or other persons entitled to receive the same, and
- (iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No 2 and the plaintiff, defendant No 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 1 for the amounts remaining due to them respectively

5 And

* Words not required to be deleted

(The First Schedule Appendix D—Decrees)

5 And it is hereby further ordered and decreed,—

(a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No 2 but defendant No 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No 2's mortgage alive for his benefit and to apply for a final decree *(in the same manner as the defendant No 2 might have done under clause 4 above)*—

*[(i) that defendant No 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.] or

*[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.]

and (b) (if on the application of defendant No 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No 1 arising from the plaintiff's mortgage or from the mortgage of defendant No 2 or from this suit shall be deemed to have been discharged and extinguished

6 And it is hereby further ordered and decreed *(in the case where a sale is ordered under clause 5 above)*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount, and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in
payment

(The First Schedule Appendix D—Decrees)

mortgage calculated up to this day of is the sum of Rs for principal, the sum of Rs for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs for the costs of the suit awarded to defendant No 2, making in all the sum of Rs

(Similar declarations to be introduced with regard to the amount due from defendant No 2 to the plaintiff in respect of his mortgage)

2 And it is hereby ordered and decreed as follows —

- (i) that defendant No 1 do pay into Court on or before the said day of or any later date up to which time for payment may be extended by the Court the said sum of Rs due to defendant No 2

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No 2 being at liberty to pay such amount)

- (ii) that, on payment of the sum declared due to defendant No 2 by defendant No 1, in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No 1, or to such person as he appoints, and defendant No 2 shall, if so required, re-convey or re-transfer the property to defendant No 1 free

from

(The First Schedule Appendix D—Decrees)

from the said mortgage clear of and from all incumbrances created by defendant No 2 or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No 1 quiet and peaceable possession of the said property, and

- (iii) that, upon payment into the Court by defendant No 1 of the amount due to defendant No 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance, if any, shall then be paid to defendant No 2, and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 2 for the amount of the balance

3 And it is further ordered and decreed that if defendant No 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc [as in sub-clause (ii) of clause 2]

4 And it is hereby further ordered and decreed that, in default of payment by defendants Nos 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold, and that for the purposes of such sale the plaintiff and defendant No 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property

5 And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as

specified

(The First Schedule Appendix D—Decreets)

specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No 2, and that, if any balance be left, it shall be paid to defendant No 1 or other persons entitled to receive the same

6 And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No 2, the plaintiff or defendant No 2 or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No 2 or defendant No 1 (as the case may be) for the amount of the balance

7 And it is hereby further ordered and decreed that, if defendant No 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No 1 makes default in payment of the amount due to defendant No 2, defendant No 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—*(declarations in the ordinary form to be introduced according to the nature of defendant No 2's mortgage and the remedies open to him thereunder)*

8 And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit

SCHEDULE

[Description of the mortgaged property]

—
No 12

DECREE FOR RECTIFICATION OF INSTRUMENT

(Title)

It is hereby declared that the _____, dated the _____ day of _____ 19____, does not truly express the intention of the parties to such

And it is decreed that the said _____ be rectified by _____

(The First Schedule Appendix D—Decrees)

No 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

IT is hereby declared that the _____, dated the _____ day of _____ 19____, and made between _____ and _____ as void as against the plaintiff and all other the creditors, if any, of the defendant

No 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

LET the defendant _____, his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff

No 15

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL

(Title)

LET the defendant _____, his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in _____ any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights

No 16

INJUNCTION RESTRAINING USE OF PRIVATE ROAD

(Title)

LET the defendant _____, his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at _____, the soil of which belongs to the plaintiff, as a carriage-way for the passage of
carts,

(The First Schedule Appendix D—Decrees)

carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever

No 17

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT

(Title)

It is ordered that the following accounts and inquiries be taken and made, that is to say —

In creditor's suit—

1 That an account be taken of what is due to the plaintiff and all other the creditors of the deceased

In suit by legatees—

2 That an account be taken of the legacies given by the testator's will

In suits by next-of-kin—

3 That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit inquiry and accounts for legatees, heirs-at-law and next-of-kin In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words The form is continued as in a creditor's suit]

4 An account of the funeral and testamentary expenses

5 An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use

6 An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of

7 And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use

8 And that if the *shall find it necessary for carrying out the objects of the suit to sell any part of the moveable

* Here insert name of proper officer

(The First Schedule Appendix D—Decrees)

moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court

9 And that Mr E F be receiver in the suit (or proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the *(and shall give security by bond for the due performance of his duties to the amount of rupees)

10 And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death,
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof,
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed

11 And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent

12 And it is ordered that G H shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the *and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle

13 And it is further ordered that, for the purpose of the inquiries heretofore directed, the *shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the *to give the most useful publicity to such inquiries

14 And

* Here insert name of proper officer

(The First Schedule Appendix D.—Decrees)

14 And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the _____ day of _____, and that the _____ *do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the _____ day of _____

15 And, lastly, it is ordered that this suit [or proceeding] stand adjourned for making final decree to the _____ day of _____ of _____

[Such part only of this decree is to be used as is applicable to the particular case]

No 18

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

(Title)

1 It is ordered that the defendant _____ do, on or before the _____ day of _____, pay into Court the sum of Rs _____, the balance by the said certificate found to be due from the said defendant on account of the estate of _____, the testator, and also the sum of Rs _____ for interest, at the rate of Rs _____ per cent per annum, from the _____ day of _____ to the _____ day of _____, amounting together to the sum of Rs _____

2 Let the _____ *of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs _____ ordered to be paid into Court as aforesaid, as follows —

(a) The costs of the plaintiff to Mr _____, his attorney [or pleader] or and the costs of the defendant to Mr _____, his attorney [or pleader]

(b) And (if any debts are due) with the residue of the said sum of Rs _____ after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the _____ *, together with subsequent interest on such of the debts as bear interest, be paid, and, after making such payments, let the amount coming to the several legatees mentioned in the _____ schedule, together

* Here insert name of proper officer

(The First Schedule Appendix D --Decrees)

together with subsequent interest (to be verified as aforesaid), be paid to them

3 And if there should then be any residue, let the same be paid to the residuary legatee

No 19

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES

(Title)

1 It is declared that the defendant is personally liable to pay the legacy of Rs _____ bequeathed to the plaintiff,

2 And it is ordered that an account be taken of what is due for principal and interest on the said legacy,

3 And it is also ordered that the defendant do, within _____ weeks after the date of the certificate of the _____, pay to the plaintiff the amount of what the _____* shall certify to be due for principal and interest,

4 And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ

No 20

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN

(Title)

1 LET the _____*of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs _____, the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E F*, the intestate, within one week after the taxation of the said costs by the said _____*, and let the defendant retain for her own use out of such sum her costs, when taxed

2 And

* Here insert name of proper officer

(The First Schedule Appendix D —Decrees)

2 And it is ordered that the residue of the said sum of Rs _____, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows —

- (a) Let the defendant, within one week after the taxation of the said costs by the _____ *as aforesaid, pay one-third share of the said residue to the plaintiffs A B, and C D, his wife, in her right as the sister and one of the next-of-kin of the said E F, the intestate
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E F, the intestate
- (c) And let the defendant, within one week after the taxation of the said costs by the _____ * as aforesaid pay the remaining one-third share of the said residue to G H, as the brother and the other next-of-kin of the said E F, the intestate

No 21

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS

(Title)

It is declared that the proportionate shares of the parties in the partnership are as follows —

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the _____ day of _____, and it is ordered that the dissolution thereof as from that day be advertised in the _____ Gazette, etc

And it is ordered that _____ be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership

And it is ordered that the following accounts be taken —

1 An account of the credits, property and effects now belonging to the said partnership,

2 An

* Hero insert name of proper officer

(The First Schedule Appendix D—Decrees)

2 An account of the debts and liabilities of the said partnership,

3 An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the _____ *may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the _____ day of _____, and that the _____ *do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the _____ day of _____

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the _____ day of _____ 19____

—
No 22

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND
THE TAKING OF PARTNERSHIP ACCOUNTS

(Title)

It is ordered that the fund now in Court, amounting to the sum of Rs _____, be applied as follows —

1 In payment of the debts due by the partnership set forth in the certificate of the _____ *amounting in the whole to Rs _____

2 In payment of the costs of all parties in this suit, amounting to Rs _____
[These costs must be ascertained before the decree is drawn up]

3 In _____

* Here insert name of proper officer

(The First Schedule Appendix D —Decrees)

3 In payment of the sum of Rs _____ to the plaintiff
 as his share of the partnership-assets, of the sum of Rs _____
 , being the residue of the said sum of Rs _____
 now in Court, to the defendant as his share of the partnership-
 assets

[Or, And that the remainder of the said sum of Rs _____
 be paid to the said plaintiff (or defendant) in part
 payment of the sum of Rs _____ certified to be due to
 him in respect of the partnership-accounts]

4 And that the defendant [or plaintiff] do on or before
 the _____ day of _____
 pay to the plaintiff [or defendant] the sum of Rs _____
 being the balance of the said sum of Rs _____
 due to him, which will then remain due

No 23

DECREE FOR RECOVERY OF LAND AND MESNE PROFITS

(Title)

It is hereby decreed as follows —

1 That the defendant do put the plaintiff in possession
 of the property specified in the schedule hereunto annexed

2 That the defendant do pay to the plaintiff the sum of
 Rs _____ with interest thereon at the rate of _____
 per cent per annum to the date of realization on account of
 mesne profits which have accrued due prior to the institution
 of the suit

Or

2 That an inquiry be made as to the amount of mesne
 profits which have accrued due prior to the institution of
 the suit

3 That an inquiry be made as to the amount of mesne
 profits from the institution of the suit until [the delivery of
 possession to the decree-holder] [the relinquishment of posses-
 sion by the judgment-debtor with notice to the decree-holder
 through the Court] [the expiration of three years from the
 date of the decree]

Schedule

APPENDIX E

(The First Schedule Appendix E—Execution)

APPENDIX E

EXECUTION

No 1

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED

(O 21, r 2)

(Title)

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of Rs recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19, to show cause why the payment/adjustment aforesaid should not be recorded as certified

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No 2

PRECEPT (Section 46)

(Title)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree

Schedule

Dated the day of 19

Judge.

No 3

(The First Schedule Appendix E —Execution)

No 3

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT

(O 21, r 6)

(Title)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction

Dated the day of 19

Judge

No 4

CERTIFICATE OF NON-SATISFACTION OF DECREE (O 21, r 6)

(Title)

CERTIFIED that no (1) satisfaction of the decree of this Court in Suit No of 19, a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court

Dated the day of 19

Judge

(1) If partial, strike out "no" and state to what extent

No 5

(The First Schedule Appendix E—Execution)

No 5

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT (O 21, r 6)

(Title)

| 1 Number of suit and the Court by which the decree was passed | 2 Names of parties | 3 Date of application for execution | 4 Number of the execution case | 5 Processes issued and dates of service thereof | 6 Costs of execution | 7 Amount realized | 8 How the case is disposed of | 9 Remarks |
|------------------------------------------------------------------|-----------------------|----------------------------------------|-----------------------------------|----------------------------------------------------|-------------------------|----------------------|----------------------------------|--------------|
| | | | | | Rs a p. | Rs a p. | | |

Signature of Muharrir in charge.

Signature of Judge
No 6.

(The First Schedule Appendix E—Execution)

No 6

APPLICATION FOR EXECUTION OF DECREE (O 21, r 11)

In the Court of

I , decree-holder, hereby apply for execution of the decree herein below set forth.

| 2 | Names of parties | 3 | Date of decree | 4 | Whether any appeal preferred from decree | 5 | Payment or adjustment made, if any | 6 | Previous application, if any, with date and result | 7 | Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree | 8 | Amount of costs, if any, awarded | 9 | Against whom to be executed | 10 | Mode in which the assistance of the Court is required |
|-----|------------------|---|------------------|----|------------------------------------------|------|------------------------------------|----------|----------------------------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-------|----------------------------------|---------------------------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| C D | —Defendant | | October 11, 1897 | No | | None | | Rs. 72 4 | recorded on application, dated the 4th March, 1890 | Rs 314 8 2 principal [interest at 6 per cent per annum, from date of decree till payment] | Rs A P 47 10 4 8 2 0 | Total | 55 12 4 | Against the defendant C D | | [When attachment and sale of moveable property is sought] I pray that the total amount of Rs [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendants moveable property as per annexed list and paid to me [When attachment and sale of immoveable property is sought] I pray that the total amount of Rs [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me | |

(The First Schedule Appendix E —Execution)

I declare that what is stated herein is true to the best of my knowledge and belief

Signed _____, decree holder

Dated the _____ day of _____ 19 _____,

[When attachment and sale of immoveable property is sought]
Description and Specification of Property

The undivided one-third share of the judgment-debtor in a house situated in the village of _____, value Rs 40, and bounded as follows —

East by G's house, west by H's house, south by public road, north by private lane and J's house

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified

Signed _____, decree-holder

—————
No 7

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE

¹[(O 21, r 16)]

(Title)

To

WHEREAS

_____ has made application to this Court for execution of decree in Suit No _____ of 19 _____, on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court _____ on the _____ day of _____ 19 _____, to show cause why execution should not be granted

GIVEN under my hand and the seal of the Court, this
day of _____ 19 _____

Judge

No 8.

¹ This reference was substituted for the reference "(O 21 r 22)" by s 2 and Sch I of the Repealing and Amending Act, 1914 (10 of 1914)

(The First Schedule Appendix E —Execution)

No 8

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION
OF A DECREE FOR MONEY (O 21, r 30)

(Title)

To

The Bailiff of the Court

WHEREAS _____ was ordered by decree of this Court
passed on the _____ day of _____ 19 _____, in Suit No

of _____ 19 _____, to pay to
the plaintiff the sum of
Rs _____ as noted in the

| Decree. | | | |
|--------------------|--|--|--|
| Principal | | | |
| Interest | | | |
| Costs | | | |
| Costs of execution | | | |
| Further interest | | | |
| Total | | | |

margin, and whereas the said
sum of Rs _____ has not
been paid, These are to
command you to attach the
moveable property of the
said _____
as set forth in the schedule
hereunto annexed, or which
shall be pointed out to you

by the said _____, and unless the
said _____ shall pay to you the said sum of Rs
_____ together with Rs _____, the costs of this
attachment, to hold the same until further orders from this
Court

You are further commanded to return this warrant on or
before the _____ day of _____ 19 _____, with
an endorsement certifying the day on which and manner in
which it has been executed, or why it has not been executed

GIVEN under my hand and the seal of the Court this
day of _____ 19 _____

Schedule

Judge

No 9

(The First Schedule Appendix E —Execution)

No 9

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY
ADJUDGED BY DECREE (O 21, r 31)

(Title)

To

The Bailiff of the Court

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No of 19 , to deliver to the plaintiff the moveable property (or a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered,

These are to command you to seize the said moveable property (or a share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf

GIVEN under my hand and the seal of the Court, this day of 19

Schedule

Judge

No 10

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT
(O 21, r 34)

(Title)

To

TAKE notice that on the day of 19 , the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immoveable property specified hereunder, and that the day of 19 , is appointed for the hearing of the said application, and that

you

(The First Schedule Appendix E —Execution)

you are at liberty to appear on the said day and to state in writing any objections to the said draft

Description of Property

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 11

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC (O 21, r 35)

(Title)

To

The Bailiff of the Court

WHEREAS the undermentioned property in the occupancy of has been decreed to , the plaintiff in this suit, You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same

GIVEN under my hand and the seal of the Court this day of 19

Schedule

Judge

No 12

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE (O 21, r 37)

(Title)

To

WHEREAS has made application to this Court for execution of decree in suit No

(The First Schedule Appendix E —Execution)

of 19 , by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19 , to show cause why you should not be committed to the civil prison in execution of the said decree

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 13

WARRANT OF ARREST IN EXECUTION (O 21, r 38)

(Title)

To

The Bailiff of the Court

WHEREAS of the Court in Suit No

was adjudged by a decree of 19 , dated the day of

| | | | |
|-----------|--|--|--|
| Decree | | | |
| Principal | | | |
| Interest | | | |
| Costs | | | |
| Execution | | | |
| Total | | | |

19 , to pay to the decree-holder the sum of Rs as noted in the margin, and whereas the said sum of Rs has not been paid to the said decree-holder in satisfaction of the said decree, These are to command you to arrest the said judgment debtor and unless the said

judgment debtor shall pay to you the said sum of Rs together with Rs for the costs of executing this process, to bring the said defendant before the Court with all convenient speed

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and

manner

of 1908]

Civil Procedure

(The First Schedule Appendix E —Execution)

manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 14

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL

(O 21, r 40)

(Title)

To

The Officer in charge of the Jail at

WHEREAS who has
been brought before this Court this day of
19 , under a warrant in execution of a decree
which was made and pronounced by the said Court on the
day of 19 , and by which decree it was
ordered that the said
should pay , And whereas the
said has not
obeyed the decree nor satisfied the Court that he is entitled
to be discharged from custody, You are hereby, in the name
of the King-Emperor of India, commanded and required to
take and receive the said

into the civil prison and keep him
imprisoned therein for a period not exceeding or
until the said decree shall be fully satisfied, or the said
shall be otherwise entitled to be released according to the
terms and provisions of section 58 of the Code of Civil
Procedure, 1908, and the Court does hereby fix
annas per diem as the rate of the monthly allowance for the
subsistence of the said
during his confinement under this warrant of committal

GIVEN under my signature and the seal of the Court, this
day of 19

Judge

No 15

(The First Schedule Appendix E —Execution)

No 15

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE (Sections 58, 59)

(Title)

To

The Officer in charge of the Jail at

UNDER orders passed this day, you are hereby directed to set free

judgment-debtor now in your custody

Dated

Judge

No 16

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF (O 21, r 46)

(Title)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 19 , in Suit No of 19 in favour of for Rs , It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from the following property in the possession of the said

, that is to say, to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court from delivering the said property to any person or persons whomsoever

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 17

(The First Schedule Appendix E —Execution)

No 17

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

(O 21, r 46)

(Title)

To

WHEREAS has failed to satisfy a decree passed against on the day of 19 , in Suit No of 19 , in favour of for Rs , It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 18

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION (O 21, r. 46)

(Title)

To

Secretary of Defendant and to Corporation has failed to satisfy a decree passed against on the

(The First Schedule Appendix E—Execution)

day of _____ 19 __, in Suit No _____
of 19 __, in favour of _____, for Rs _____,
It is ordered that you, the defendant, be, and you are hereby,
prohibited and restrained, until the further order of this
Court, from making any transfer of _____ shares
in the aforesaid Corporation, namely, _____, or
from receiving payment of any dividends thereon, and you,
_____, the Secretary of the said Corporation, are
hereby prohibited and restrained from permitting any such
transfer or making any such payment

GIVEN under my hand and the seal of the Court, this _____
day of _____ 19 __,

Judge

No 19

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF
RAILWAY COMPANY OR LOCAL AUTHORITY (O 21, r 48)

(Title)

To

WHEREAS
judgment-debtor in the above-named case, is a (*describe office
of judgment-debtor*) receiving his salary (*or allowances*) at
your hands, and whereas _____,
decree-holder in the said case, has applied in this Court for
the attachment of the salary (*or allowances*) of the said
_____ to the extent of _____ due to
him under the decree, You are hereby required to withhold
the said sum of _____ from the salary of the said
_____ in monthly instalments of _____
and to remit the said sum (*or monthly
instalments*) to this Court

GIVEN under my hand and the seal of the Court, this _____
day of _____ 19 __

Judge

No 20

(The First Schedule Appendix E—Execution)

No 20

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT

(O 21, r 51)

(Title)

To

The Bailiff of the Court

WHEREAS an order has been passed by this Court on the
 day of 19 , for the
 attachment of

You are hereby directed to seize the said
 and bring the same into Court

GIVEN under my hand and the seal of the Court this
 day of 19

Judge

 No 21

ATTACHMENT

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY
 OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE
 OR ¹[PUBLIC OFFICER] (O 21, r 52)

(Title)

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI
 of the Code of Civil Procedure, 1908, for an attachment of
 certain money now in your hands (*here state how the money is
 supposed to be in the hands of the person addressed, on what
 accounts, etc*), I request that you will hold the said money
 subject to the further order of this Court

I have the honour to be,

SIR,

Your most obedient Servant,

Judge

Dated the day of 19

No 22

¹ These words were substituted for the words " officer of Government " by para 3 and Sch. I of the Government of India (Adaptation of Indian Laws) Order, 1937

(The First Schedule Appendix E—Execution)

No 22

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT (O 21, r 53)

(Title)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your Court on the day of 19 by in Suit No of 19 in which he was and

was has been attached by this Court on the application of , the in the suit specified above You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment debtor

I have the honour, etc ,

Judge

Dated the day of 19

No 23

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE (O 21, r 53)

(Title)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of 19 , in the Court of in Suit No

of

OF 1908]

Civil Procedure

(*The First Schedule. Appendix E — Execution*)

of 19 , in which was and
was , It is ordered
that you, the said , be, and you
are hereby, prohibited and restrained, until the further order
of this Court, from transferring or charging the same in
any way

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 24

ATTACHMENT IN EXECUTION

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IM-
MOVEABLE PROPERTY (O 21, r 54)

(*Title*)

To

Defendant

WHEREAS you have failed to satisfy a decree passed against
you on the day of
19 in Suit No of 19 ,
in favour of
for Rs . It is
ordered that you, the said
be, and you are hereby, prohibited and restrained, until the
further order of this Court, from transferring or charging
the property specified in the schedule hereunto annexed, by
sale, gift or otherwise and that all persons be, and that they
are hereby, prohibited from receiving the same by purchase,
gift or otherwise

GIVEN under my hand and the seal of the Court, this
day of 19

Schedule

Judge

No 25

(The First Schedule Appendix E —Execution)

No 25

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC , OF MONEY, ETC .
IN THE HANDS OF A THIRD PARTY (O 21, r 56)

(Title)

To

WHEREAS the following property has been
attached in execution of a decree in Suit No of
19 , passed on the day of
19 , in favour of
for Rs , It is ordered that
the property so attached, consisting of Rs
in money and Rs in currency-
notes, or a sufficient part thereof to satisfy the said decree,
shall be paid over by you, the said
to

GIVEN under my hand and the seal of the Court, this
day of 19

Judge.

—————
No 26

NOTICE TO ATTACHING CREDITOR (O 21, r 58)

(Title)

To

WHEREAS has made application
to this Court for the removal of attachment on
placed at your instance in execution of the decree
in Suit No of 19 , this is to give you notice to
appear before this Court on , the
day of 19 ,
either in person or by a pleader of the Court duly instructed
to support your claim, as attaching creditor

GIVEN under my hand and the seal of the Court this
day of 19

Judge

No 27.

(The First Schedule Appendix E —Execution)

No 27

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY (O 21, r 66)

(Title)

To

The Bailiff of the Court

THESE are to command you to sell by auction, after giving _____ days' previous notice, by affixing the same in this Court-house and after making due proclamation, the

_____ property attached under a warrant from this Court, dated the _____ day of _____ 19 _____, in execution of a decree in favour of _____ in Suit No _____

of 19 _____, or so much of the said property as shall realize the sum of Rs _____, being the

_____ of the said decree and costs still remaining unsatisfied

You are further commanded to return this warrant on or before the _____ day of _____ 19 _____, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this day of _____ 19 _____

Judge

No 28

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION. (O 21, r 66)

(Title)

To

Judgment-debtor

WHEREAS in the above-named suit _____, the decree-holder, has applied for the sale of _____, You are hereby informed _____,

that

(The First Schedule Appendix E — Execution)

that the _____ day of _____ 19
has been fixed for settling the terms of the proclamation of
sale

GIVEN under my hand and the seal of the Court, this
day of _____ 19

Judge

No 29

PROCLAMATION OF SALE (O 21, r 66)

(Title)

Notice is hereby given that, under rule 64 of Order XXI
of the Code of Civil Procedure, 1908, an order has been
passed by this Court for the sale of the attached property
mentioned in the annexed schedule, in satisfaction of the
claim of the decree-holder in the
up to date of sale to the sum of

(1) Suit No _____ of 19 _____
decided by the _____ of _____ in which
and _____ was plaintiff
_____ was defendant

The sale will be by public auction, and the property will
be put up for sale in the lots specified in the schedule. The
sale will be of the property of the judgment-debtors above-
named as mentioned in the schedule below, and the liabilities
and claims attaching to the said property, so far as they
have been ascertained, are those specified in the schedule
against each lot

In the absence of any order of postponement, the sale will
be held by _____
at the monthly sale commencing at _____ o'clock on the _____
at _____ In the event,
however, of the debt above specified and of the costs of the
sale being tendered or paid before the knocking down of any
lot, the sale will be stopped

At the sale the public generally are invited to bid, either
personally or by duly authorized agent. No bid by, or on
behalf of, the judgment-creditors above-mentioned, however,
will be accepted, nor will any sale to them be valid without

the

(The First Schedule Appendix E—Execution)

the express permission of the Court previously given The following are the further

Conditions of Sale

1 The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation

2 The amount by which the biddings are to be increased shall be determined by the officer conducting the sale In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction

3 The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to declare acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so

4 For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI

5 In the case of moveable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold

6 In the case of immoveable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold

7 The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day

8 In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser

shall

(The First Schedule Appendix E—Execution)

shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

Schedule of Property

| Number of lot | Description of property to be sold, with the name of each owner where there are more judgment debtors than one | The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government | Detail of any incumbrances to which the property is liable | Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value |
|---------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| | | | | |

No 30

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE (O 21, 1 66)

(Title)

To

The Nazir of the Court

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the

day of 19 , has been fixed for the sale of the said property,

copies of the
proclamation

(The First Schedule Appendix E—Execution)

possession, you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 33

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER (O 21, r 79)

(Title)

To

and to

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of

being debts due from you to you

, It is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 34

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION (O 21, r 79)

(Title)

To

and , Secretary of Corporation

WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit,

of

(The First Schedule Appendix E —Execution)

of certain shares in the above Corporation, that is to say, of standing in the name of you

, It is

ordered that you

be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon, and you

, Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said the purchaser aforesaid

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 35

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE OR SELL PROPERTY (O 21, r 83)

(Title)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 , for the sale of the under-mentioned property of the judgment-debtor

, and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate, provided that all monies payable under such mortgage lease or sale shall be paid into this Court and not to the said judgment-debtor

GIVEN

(The First Schedule Appendix E —Execution)

GIVEN under my hand and the seal of the Court, this day of 19

Description of property

Judge

No 36

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE (O 21, 11 90, 92)

(Title)

To

WHEREAS the under-mentioned property was sold on the day of 19 , in execution of the decree passed in the above-named suit, and whereas , the decree-holder [or judgment-debtor] has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined

GIVEN under my hand and the seal of the Court, this day of 19

Description of property

Judge

No 37

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE (O 21, 11 90 92)

(Title)

To

WHEREAS , the purchaser of the under-mentioned property sold on the day

(The First Schedule Appendix E—Execution)

day of _____ 19 _____, in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that _____, the judgment-debtor, had no saleable interest therein

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of _____ 19 _____, when the said application will be heard and determined

GIVEN under my hand and the seal of the Court, this day of _____ 19 _____

Description of property.

Judge

No 38

CERTIFICATE OF SALE OF LAND (O 21, r 94)

(Title) _____

THIS is to certify that _____ has been declared the purchaser at a sale by public auction on the day of _____ 19 _____ of _____ in execution of decree in this suit, and that the said sale has been duly confirmed by this Court

GIVEN under my hand and the seal of the Court, this day of _____ 19 _____

Judge

No 39

(The First Schedule Appendix E —Execution)

No 39

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION (O 21, 1 95)

(Title)

To

The Bailiff of the Court

WHEREAS _____ has become the certified purchaser of _____ at a sale in execution of decree in suit No _____ of _____ 19 _____, You are hereby ordered to put the said _____, the certified purchaser, as aforesaid, in possession of the same

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19 _____

Judge

No 40

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE (O 21, r 97)

(Title)

To

WHEREAS _____, the decree-holder in the above suit, has complained to this Court that you have resisted (or obstructed) the officer charged with the execution of the warrant for possession

You are hereby summoned to appear in this Court on the _____ day of _____ 19 _____, at _____ A M, to answer the said complaint

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19 _____

Judge

No 41

(The First Schedule Appendix E —Execution)

No 41

WARRANT OF COMMITTAL (O 21, r 98)

(Title)

To

The Officer in Charge of the Jail at

WHEREAS the under-mentioned property has been decreed to , the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [or obstructed] and is still resisting [or obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison,

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 42

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND (Section 72)

(Title)

To

, Collector of

SIR,

In answer to your communication No , dated , representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you

I have the honour to be,

SIR,

Your obedient Servant,

Judge

APPENDIX F

(The First Schedule Appendix F—Supplemental proceedings)

APPENDIX F

SUPPLEMENTAL PROCEEDINGS

No 1

WARRANT OF ARREST BEFORE JUDGMENT (O 38, r 1)

(Title)

To

The Bailiff of the Court

WHEREAS
suit, claims the sum of Rs

| | | |
|-----------|--|--|
| Principal | | |
| Interest | | |
| Costs | | |
| Total | | |

, the plaintiff in the above
as noted in the margin
and has proved to the satisfac-
tion of the Court that there is
probable cause for believing
that the defendant

is about to
These are to command you to
demand and receive from the
said the sum
of Rs as sufficient

to satisfy the plaintiff's claim, and unless the said sum of
Rs is forthwith delivered to you by or on behalf of
the said, to take the said into custody,
and to bring him before this Court, in order that he may
show cause why he should not furnish security to the amount
of Rs for his personal appearance before the Court,
until such time as the said suit shall be fully and finally
disposed of, and until satisfaction of any decree that may
be passed against him in the suit

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 2

(The First Schedule Appendix F—Supplemental proceedings)

No 2

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT (O 38, r 2)

(Title)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant, has been arrested and brought before the Court,

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit, and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit

Witness my hand at this day of 19

(Signed),

Witnesses

1

2

No 3

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE (O 38, r 3)

(Title)

To

WHEREAS , who became surety on the day of 19 for your appearance in the above suit, has applied to this Court to be discharged from his obligation

You

(The First Schedule Appendix F—Supplemental proceedings)

You are hereby summoned to appear in this Court in person on the day of 19, at AM, when the said application will be heard and determined

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 4

ORDER FOR COMMITTAL (O 38, r 4)

(Title)

To

WHEREAS, plaintiff in this suit, has made application to the Court that security be taken for the appearance of, the defendant, to answer any judgment that may be passed against him in the suit, and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do, it is ordered that the said defendant be committed to the civil prison until the decision of the suit, or, if judgment be pronounced against him, until satisfaction of the decree

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 5

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE (O 38, r 5)

(Title)

To

The Bailiff of the Court

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit

These

(The First Schedule Appendix F—Supplemental proceedings)

These are to command you to call upon the said defendant on or before the day of 19 either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him, or to appear and show cause why he should not furnish security, and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the day of 19, with an endorsement certifying the date on which and the manner in which it has been executed or, the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 6

SECURITY FOR THE PRODUCTION OF PROPERTY (O 28, r 5),

(Title)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed,

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs or such sum not exceeding the said sum as the said Court may adjudge

Schedule

(The First Schedule Appendix F—Supplemental proceedings)

Schedule

Witness my hand at this day of 19 (Signed)

Witnesses

- 1 2

No 7

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY (O 38, r 6)

(Title)

To

The Bailiff of the Court

WHEREAS, the plaintiff in this suit, has applied to the Court to call upon the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do, These are to command you to attach the property of the said, and keep the same under safe and secure custody until the further order of the Court, and you are further commanded to return this warrant on or before the day of 19, with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 8

TEMPORARY INJUNCTIONS (O 39, r 1)

(Title)

Upon motion made unto this Court by, Pleader of [or Counsel for] the plaintiff A B, and upon reading the petition

(The First Schedule Appendix F—Supplemental proceedings)

petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the day of , or the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof [*if after notice and defendant not appearing add*, and also the evidence of as to service of notice of this motion upon the defendant C D] This Court doth order that an injunction be awarded to restrain the defendant C D, his servants, agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned*], being No 9, Oilmongers Street, Hindupur, in the Taluk of and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court

Dated this day of

Judge

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus —*]

 to restrain the defendants and from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or bill of exchange*] in question, dated on or about the , etc, mentioned in the plaintiff's plaint [*or petition*] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court

[*In Copyright cases*] to restrain the defendant C D, his servants, agents or workmen, from printing, publishing or vending a book, called , or any part thereof, until the, etc

[*Where part only of a book is to be restrained*]

to

(The First Schedule Appendix F—Supplemental proceedings)

to restrain the defendant C D, his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [or petition and evidence, etc] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled

and also that part which is entitled
[or which is contained in page _____ to page
both inclusive] until _____, etc

[In Patent cases] to restrain the defendant C D, his agents, servants and workmen, from making or vending any perforated bricks [or as the case may be] upon the principle of the inventions in the plaintiff's plant [or petition, etc, or written statement, etc,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plant [or as the case may be] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc

[In cases of Trade marks] to restrain the defendant C D, his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [or as the case may be] described as or purporting to be blacking manufactured by the plaintiff A B, in bottles having affixed thereto such labels as in the plaintiff's plant [or petition, etc] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A B, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A B, until the, etc

[To restrain a partner from in any way interfering in the business]

to restrain the defendant C D, his agents and servants, from entering into any contract, and from

accepting,

(The First Schedule Appendix F—Supplemental proceedings)

accepting, drawing, endorsing or negotiating any bill of exchange note or written security in the name of the partnership-firm of B and D, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B and D, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc

No 1[9]

APPOINTMENT OF A RECEIVER (O 40, r 1)

(Title)

To

WHEREAS _____ has been attached in execution of a decree passed in the above suit on the _____ day of _____ 19____, in favour of _____, You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on _____. You will be entitled to remuneration at the rate of _____ per cent upon your receipts under the authority of this appointment

GIVEN under my hand and the seal of the Court, this
day of _____ 19____

Judge

No 1[10].

¹Forms 6 and 7 were renumbered 9 and 10 respectively, by s. 2 and Sch I of the Repealing and Amending Act, 1914 (10 of 1914)

(The First Schedule Appendix F—Supplemental proceedings)

No 1[10]

BOND TO BE GIVEN BY RECEIVER (O 40, r 3)

(Title)

KNOW all men by these presents, that we, _____ and _____ and _____, are jointly and severally bound to _____ of the Court of _____ in Rs _____ to be paid to the said _____ or his successor in office for the time being For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents

Dated this _____ day of _____ 19_____

Whereas a plaint has been filed in this Court by _____ against _____ for the purpose of [*here insert the object of suit*]

And whereas the said _____ has been appointed, by order of the above-mentioned Court to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of _____ in the said plaint named _____

Now the condition of this obligation is such, that if the above-bounden _____ shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said _____ at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force

Signed and delivered by the above-bounden in the presence of _____

Note—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond

APPENDIX G

¹ Forms 6 and 7 were renumbered 9 and 10, respectively, by s 2 and Sch I of the Repealing and Amending Act, 1914 (10 of 1914)

(The First Schedule Appendix G—Appeal, Reference and Review)

APPENDIX G,
APPEAL, REFERENCE AND REVIEW

No 1

MEMORANDUM OF APPEAL (O 41, r 1)
(Title)

The

above-named appeals to the
Court at from the decree of
in Suit No of 19, dated the
day of 19, and sets forth the following
grounds of objection to the decree appealed from, namely —

No 2

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY
EXECUTION OF DECREE (O 41, r 5)
(Title)

To

This security bond on stay of execution of decree executed
by witnesseth —

That, the plaintiff in Suit No of 19,
having sued, the defendant, in this Court and a
decree having been passed on the day of 19
in favour of the plaintiff, and the defendant having pre-
ferred an appeal from the said decree in the Court,
the said appeal is still pending

Now the plaintiff decree-holder having applied to execute
the decree, the defendant has made an application praying
for stay of execution and has been called upon to furnish
security Accordingly I, of my own free will, stand
security to the extent of Rs, mortgaging the prop-
erties specified in the schedule hereunto annexed, and cove-
nant that if the decree of the first Court be confirmed

or

(The First Schedule Appendix G,—Appeal, Reference and Review)

or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby incumbered, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this _____ day of _____ 19____

Schedule

Witnessed by

(Signed)

1

2

 No 3

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF
APPEAL (O 41, r 6)

(Title)

To

This security bond on stay of execution of decree executed by _____ witnesseth —

That _____, the plaintiff in Suit No _____ of 19____, having sued _____, the defendant, in this Court and a decree having been passed on the _____ day of _____ 19____ in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the _____ Court, the said appeal is still pending

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs _____, mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied

(The First Schedule Appendix G—Appeal, Reference and Review)

varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance To this effect I execute this security bond this day of 19

Schedule

Witnessed by

(Signed)

1

2

No 4

SECURITY FOR COSTS OF APPEAL (O 41, r 10)

(Title)

To

This security bond for costs of appeal executed by witnesseth —

This appellant has preferred an appeal from the decree in Suit No of 19 , against the respondent, and has been called upon to furnish security Accordingly I, of my own free will stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to

pay

423

(The First Schedule Appendix G —Appeal, Reference and Review)

pay the balance To this effect I execute this security bond
this day of 19

Schedule

(Signed)

Witnessed by

- 1
- 2

No 5

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL.
(O 41, r 13)

(Title)

To

You are hereby directed to take notice that ,
the in the above suit, has preferred an appeal to this
Court from the decree passed by you therein on the
day of 19

You are requested to send with all practicable despatch all
material papers in the suit

Dated the day of 19
Judge

No 6

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING
OF THE APPEAL (O 41, r 14)

(Title)

APPEAL from the of the Court of
dated the day of 19
To

Respondent

TAKE notice that an appeal from the decree of
in this case has been presented by and registered

OF 1908]

Civil Procedure

(*The First Schedule Appendix G—Appeal, Reference and Review*)

in this Court, and that the day of
19 has been fixed by this Court for the hearing of this
appeal

If no appearance is made on your behalf by yourself,
your pleader, or by some one by law authorized to act for
you in this appeal, it will be heard and decided in your
absence

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

[*Note*—If a stay of execution has been ordered, intima-
tion should be given of the fact on this notice]

No 7

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE
APPEAL BUT JOINED BY THE COURT AS A RESPONDENT

(O 41, r 20)

(*Title*)

To

WHEREAS you were a party in suit No of
19 , in the Court of , and whereas the
 has preferred an appeal to this Court from the
decree passed against him in the said suit and it appears to
this Court that you are interested in the result of the said
appeal

This is to give you notice that this Court has directed you
to be made a respondent in the said appeal and has adjourned
the hearing thereof till the day of
19 , at A M If no appearance is made on
your behalf on the said day and at the said hour the appeal
will be heard and decided in your absence

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 8

(The First Schedule Appendix G—Appeal, Reference and Review)

No 8

MEMORANDUM OF CROSS OBJECTION (O 41, r 22) (Title)

WHEREAS the Court at from the decree of in Suit No of 19, dated the day of 19, and whereas notice of the day fixed for hearing the appeal was served on the on the day of 19, the files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely —

No 9

DECREE IN APPEAL (O 41, r 35) (Title)

Appeal No of 19 from the decree of the Court of dated the , day of 19

Memorandum of Appeal

Plaintiff

Defendant

The above-named appeals to the Court at from the decree of in the above suit, dated the day of 19, for the following reasons, namely —

This appeal coming on for hearing on the day of 19, before , in the presence of for the appellant and of for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs , are to be paid by The costs of the original suit are to be paid by

GIVEN under my hand this day of 19

Judge

Costs

(The First Schedule Appendix G—Appeal, Reference and Review)

Costs of Appeal

| Appellant | Amount | | | Respondent | Amount | | |
|----------------------------------|--------|---|---|----------------------|--------|---|----|
| | Rs | Δ | P | | Rs | Δ | P. |
| 1 Stamp for memorandum of appeal | | | | Stamp for power | | | |
| 2 Do for power | | | | Do for petition | | | |
| 3 Service of processes | | | | Service of processes | | | |
| 4 Pleader's fee on Rs | | | | Pleader's fee on Rs | | | |
| Total | | | | Total | | | |

No 10

APPLICATION TO APPEAL *in forma pauperis* (O 44, r 1)
(Title)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof

Dated the day of 19

(Signed)

Note—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper

(The First Schedule Appendix G—Appeal, Reference and Review)

No 11

NOTICE OF APPEAL in formā pauperis (O 44, r 1)

(Title)

WHEREAS the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19 and whereas the day of 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 12

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE KING IN COUNCIL SHOULD NOT BE GRANTED (O 45, r 3)

(Title)

To

TAKE notice that has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil Procedure, 1908, or that it is otherwise a fit one for appeal to His Majesty in Council

The day of 19 is fixed for you to show cause why the Court should not grant the certificate asked for

GIVEN under my hand and the seal of the Court, this day of 19

Registrar

No 13.

of 1908]

Civil Procedure

(*The First Schedule Appendix G--Appeal, Reference and Review*)

No 13

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE
KING IN COUNCIL (O 45, r 8)

(*Title*)

To

WHEREAS _____, the
_____ in the above case, has furnished the security and
made the deposit required by Order XLV, rule 7, of the Code
of Civil Procedure, 1908

Take notice that the appeal of the said _____ to His
Majesty in Council has been admitted on the _____ day of
19 _____

Given under my hand and the seal of the Court, this
day of _____ 19 _____

Registrar

No 14

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE
GRANTED (O 47, r 4)

(*Title*)

To

TAKE notice that _____ has applied to this Court
for a review of its decree passed on the _____ day of
19 _____ in the above case. The _____ day of
19 _____ is fixed for you to show cause why the Court should
not grant a review of its decree in this case

Given under my hand and the seal of the Court, this
day of _____ 19 _____

Judge

APPENDIX H

(The First Schedule Appendix H—Miscellaneous)

APPENDIX H

MISCELLANEOUS

No 1

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED

(O 14, r 6)

(Title)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [or of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of 19 and filed as Exhibit in the said suit, is or is not beyond the statute of limitation (or state the point at issue whatever it may be)

We therefore severally bind ourselves that, upon the finding of the Court in the negative [or affirmative] of such issue, will pay to the said the sum of Rupees (or such sum as the Court shall hold to be due thereon), and I, the said, will accept the said sum of Rupees (or such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [or that upon such finding I, the said will do or abstain from doing, etc , etc]

Plaintiff

Defendant

Witnesses —

1

2

Dated the day of 19

No 2

OF 1908]

Civil Procedure

(*The First Schedule Appendix H—Miscellaneous*)

No 2

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO
ANOTHER COURT FOR TRIAL (Section 24)

In the Court of the District Judge of

No of 19

WHEREAS an application, dated the day of
19 has been made to this Court by
the in Suit No of 19 now
pending in the Court of the at , in which
is plaintiff and is defendant, for
the transfer of the suit for trial to the Court of the
at
you are hereby informed that the day of
19 has been fixed for the hearing of the application,
when you will be heard if you desire to offer any objection
to it

GIVEN under my hand and the seal of the Court, this
day of 19 .

Judge

No 3

NOTICE OF PAYMENT INTO COURT (O 24, r 2)

(*Title*)

TAKE notice that the defendant has paid into Court
Rs and says that that sum is sufficient to satisfy
the plaintiff's claim in full

X Y , *Pleader for the defendant*

To Z , *Pleader for the plaintiff* - -

No 4

(The First Schedule Appendix H — Miscellaneous)

No 4

NOTICE TO SHOW CAUSE (GENERAL FORM)
(Title)

To

WHEREAS the above-named
has made application to this Court that
You are hereby warned to appear in this Court in person
or by a pleader duly instructed on the
day of 19 , at o'clock in the
forenoon, to show cause against the application, failing
wherein, the said application will be heard and determined
ex parte

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 5

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF
DEFENDANT (O 13, r 1)

(Title)

| No | Description of document | Date, if any, which the docu- ment bears | Signature of party or pleader |
|----|-------------------------|------------------------------------------------|----------------------------------|
| 1 | 2 | 3 | 4 |
| | | | |

No 6

(The First Schedule Appendix H—Miscellaneous)

No 6

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF
A WITNESS ABOUT TO LEAVE THE JURISDICTION (O 18,
r 16)

(Title)

To

plaintiff (or defendant)

WHEREAS in the above suit application has been made to the Court by _____ that the examination of _____, a witness required by the said _____, in the said suit may be taken immediately, and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or any other good and sufficient cause to be stated*)

TAKE notice that the examination of the said witness _____ will be taken by the Court on the _____ day of _____ 19

Dated the _____ day of _____ 19

Judge

No 7

COMMISSION TO EXAMINE ABSENT WITNESS (O 26, rr 4, 18)

(Title)

To

WHEREAS the evidence of _____ is required by the _____ in the above suit, and whereas _____, you are requested to take the evidence on interrogatories [*or viva voce*] of such witness _____, and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum

(The First Schedule Appendix H—Miscellaneous)

which accompany this letter of request (or *vidé voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing if any, for the examination of other witnesses to the said Court

(Note—If the request is directed to a Foreign Court, the words “through His Majesty’s Secretary of State for Foreign Affairs for transmission” should be inserted after the words “other witnesses” in the last line of this form)

No 9

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE
ACCOUNTS (O 26, rr 9, 11)

(Title)

To

WHEREAS it is deemed requisite, for the purposes of this suit that a commission for

should be issued, You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application

A sum of Rs , being your fee in the above, is herewith forwarded

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 10

435

(The First Schedule Appendix H—Miscellaneous)

No 10

COMMISSION TO MAKE A PARTITION (O 26, r 13)

(Title)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the day of 19 , You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application

A sum of Rs , being your fee in the above, is herewith forwarded

GIVEN under my hand and the seal of the Court, this day of 19

Judge

 No 11

NOTICE TO MINOR DEFENDANT AND GUARDIAN (O 32 r 3)

(Title)

To

*Minor Defendant**Natural Guardian*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian

(The First Schedule Appendix H—Miscellaneous)

guardian for the suit to the minor defendant, you, the said minor, and you (1) , are hereby required to take notice that unless within _____ days from (1) He: the na: guardie the service upon you of this notice, an application is made to this Court for the appointment of you (1) or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit

GIVEN under my hand and the seal of the Court, this day of _____ 19____

Judge

No 12

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING
EVIDENCE OF PAUPERISM (O 33, r 6)

(Title)

To

WHEREAS _____ has applied to this Court for permission to institute a suit against _____ in forma pauperis under Order XXXIII of the Code of Civil Procedure, 1908, and whereas the Court sees no reason to reject the application, and whereas the _____ day of _____ 19____ has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove

(The First Schedule Appendix H—Miscellaneous)

disprove the pauperism of the applicant, you may do so on appearing in this Court on the said day of 19

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 13

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE (Section 145)

(Title)

To

WHEREAS you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit, and whereas a decree was passed on the day of 19 against the said defendant for the payment of , and whereas application has been made for execution of the said decree against you

Take notice that you are hereby required on or before the day of 19 to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No 14

No 14.
REGISTER OF CIVIL SUITS. (O 4, r 2)

Court of the _____ of _____ at _____
REGISTER OF CIVIL SUITS IN THE YEAR 19 _____

| Plaintiff | | Defendant | | Claim | | | Appearance | | | Judgment | | | Appeal | | Execution | | | | Return of Execution | | | | |
|-----------|-------------|--------------------|------|-------------|--------------------|-------------|-----------------|----------------------------------|---------------------------|-----------|-----------|------|----------|---------------------|----------------------------|--------------------|---------------------|--------------|-------------------------------|-----------------|------------------------|----------|-------------------------------------------------------------------------|
| Name | Description | Place of residence | Name | Description | Place of residence | Particulars | Amount or value | When the cause of action accrued | Day for parties to appear | Plaintiff | Defendant | Date | For whom | For what, or amount | Date of decision of appeal | Judgment in appeal | Date of application | Against whom | For what and amount, if money | Amount of costs | Amount paid into Court | Arrested | Minute of other Return than Payment of Arrest, and date of every return |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |

NOTE — Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only as the case may be, need be entered in this register

(The Second Schedule Arbitration—Arbitration in suits)

THE SECOND SCHEDULE.

ARBITRATION

Arbitration in Suits

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference

Parties to suit may apply for order of reference

(2) Every such application shall be in writing and shall state the matter sought to be referred

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties

Appointment of arbitrator

3 (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order

Order of reference

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit

4 (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

Where reference is to two or more, order to provide for difference of opinion

(a) by the appointment of an umpire, or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail, or

(c) by empowering the arbitrators to appoint an umpire, or

(d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act

5. (1) In any of the following cases, namely —

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or

Power of Court to appoint arbitrator in certain cases

the

(The Second Schedule Arbitration — Arbitration in suits)

the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves British India in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit

Powers of arbitrator or umpire appointed under paragraph 4 or 5
Summoning witnesses and default

6 Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference

7 (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court

Extension of time for making award

8 Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time

to

, (The Second Schedule Arbitration—Arbitration in suits)

to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period, or may make an order superseding the arbitration, and in such case shall proceed with the suit

9 Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

Where umpire may arbitrate in lieu of arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree

10 Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them, and notice of the filing shall be given to the parties

Award to be signed and filed

11 Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award

Statement of special case by arbitrators or umpire

12 The Court may, by order, modify or correct an award,—

Power to modify or correct award

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision, or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them

Order as to costs of arbitration.

14. The

(The Second Schedule Arbitration — Arbitration in suits)

Where award or matter referred to arbitration may be remitted

14 The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred,
- (b) where the award is so indefinite as to be incapable of execution,
- (c) where an objection to the legality of the award is apparent upon the face of it

Grounds for setting aside award

15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely —

- (a) corruption or misconduct of the arbitrator or umpire,
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire,
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit

Judgment to be according to award

16 (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award

(2) Upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with, the award

Order

(The Second Schedule Arbitration—Order of reference on agreements to refer)

Order of reference on agreements to refer

17 (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court

Application to file in Court agreement to refer to arbitration

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit, and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit

Stay of suit where there is an agreement to refer to arbitration

(The Second Schedule Arbitration—Order of reference on agreements to refer—Arbitration without the intervention of a Court)

Provisions applicable to proceedings under paragraph 17

19 The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon

Arbitration without the intervention of a Court

Filing award in matter referred to arbitration without intervention of Court

20 (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed

Filing and enforcement of such award

21 (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award

Exclusion of certain words in the Specific Relief Act, 1877

22 The last thirty-seven words of section 21 of the Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply 1 of 1877

Forms

23 The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned

(The Second Schedule Appendix)

APPENDIX

No 1

APPLICATION FOR AN ORDER OF REFERENCE

(Title of suit) •

1 This suit is instituted for (state nature of claim)

2 The matter in difference between the parties is (state matter of difference)

3 The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration

4 The applicants therefore apply for an order of reference

A B
C D

Dated the day of 19

NOTE—If the parties are agreed as to the arbitrators, it should be so stated

No 2

ORDER OF REFERENCE

(Title of suit)

UPON reading the application presented on the day of 19 it is ordered that the following matter in difference arising in this suit, namely —

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire, and such arbitrators are to make their award in writing on or before the day of

19 , and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased

(The Second Schedule Appendix)

Liberty to apply
GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 3

ORDER FOR APPOINTMENT OF NEW ARBITRATOR

(Title of suit)

WHEREAS by an order, dated the day of
19 [state order of reference and death, refusal, etc., of
arbitrator], it is by consent ordered that Z be appointed in
the place of X (deceased, or as the case may be) to act as
arbitrator with Y, the surviving arbitrator, under the said
order, and it is ordered that the award of the said arbitra-
tors be made on or before the day of
19

GIVEN under my hand and the seal of the Court, this
day of 19

Judge

No 4

SPECIAL CASE

(Title of suit)

In the matter of an arbitration between A B of
and C D of , the following special case is stated for
the opinion of the Court —

[Here state the facts concisely in numbered paragraphs]

The questions of law for the opinion of the Court are —

First, whether _____

Secondly, whether _____

X ,

Y

Dated the day of 19

No 5

(The Second Schedule Appendix)

No 5

AWARD

(Title of suit)

In the matter of an arbitration between A B of
and C D of —

WHEREAS in pursuance of an order of reference made by
the Court of _____ and dated the _____ day
of _____ 19 _____ the following matter in difference
between A B and C D namely, _____

has been referred to us for determination,

Now we, having duly considered the matter referred to us
do hereby make our award as follows —

We award

(1) that _____

(2) that _____

Dated the _____ day of _____ 19 _____

X

Y

THE THIRD SCHEDULE.

*(The Third Schedule Execution of Decrees by Collectors)***THE THIRD SCHEDULE.****EXECUTION OF DECREES BY COLLECTORS****Powers of
Collector**

1 Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree, or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold, or
- (c) sell the property ordered to be sold or so much thereof as may be necessary

**Procedure of
Collector in
special cases.**

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided

**Notice to be
given to de-
cree-holders
and to
persons
having
claims on
property**

3 (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every

(The Third Schedule Execution of Decrees by Collectors)

(b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced

(2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit, and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise

4 (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing, and inquiry

Amount of decrees for payment of money to be ascertained and immoveable property available for their satisfaction.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are

Where District Court may issue notices and hold inquiry.

known

451

(The Third Schedule Execution of Decrees by Collectors)

known to the Collector or appear in the records of his office, and forward such statement to the District Court, and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector

Effect of
decision of
Court
as to dispute

6 The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree

Scheme for
liquidation of
decrees for
payment
of money

7 (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property, or,

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

(i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property, or

(ii) by mortgaging the whole or any part of such property, or

(iii) by selling part of such property, or

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale, or

(v) partly by one of such modes, and partly by another or others of such modes

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become

payable

(The Third Schedule Execution of Decrees by Collectors)

payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may from time to time, be made in this behalf by the ¹[Provincial Government]

¹ 8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property, and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Recovery of balance (if any) after letting or management.

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

Collector to render account to Court.

(2) Such charges shall include all debts and liabilities from time to time due to ²[the Crown] in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937.

² These words were substituted for the words "the Government" by para 3 and Sch I, *ibid*

(The Third Schedule Execution of Decrees by Collectors)

- (3) The balance shall be applied by the Court—
- (a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit, and
 - (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct, or
 - (c) where the Collector has proceeded under paragraph 2,—
 - (i) in keeping down the interest on incumbrances on the property,
 - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit, and
 - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs

Sales how to
be conducted

10 Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot,
- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property,
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract as he thinks fit

11. (1) So

(The Third Schedule Execution of Decrees by Collectors)

11 (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived

12. Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the [Provincial Government] may by general rule or special order direct

Provision where property is in several districts.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents

Powers of Collector to compel attendance and production.

THE FOURTH SCHEDULE

¹ These words were substituted for the words "Local Government" by para 4 of the Government of India (Adaptation of Indian Laws) Order, 1937

(The Fourth Schedule Enactments amended)

THE FOURTH SCHEDULE.

(See section 155)

ENACTMENTS AMENDED

| 1 Year | 2 No | 3 Short title | 4 Amendment |
|-----------|---------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1870 | VII | The Court fees Act, 1870 | <p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set off or counter claim" and after the word "Act" the words "or of cross-objection" shall be inserted</p> <p>From article 11 of Schedule II the words "from an order rejecting a plant or" shall be omitted</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely — "Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908"</p> |

THE FIFTH SCHEDULE

OF 1908]

Civil Procedure_

(The Fifth Schedule Enactments repealed)

THE FIFTH SCHEDULE

*[Enactments repealed] Repealed by s 3 and Schedule II of
the Second Repealing and Amending Act, 1914 (17 of
1914)*

APPENDIX I.

APPENDIX I.

**RULES MADE BY THE HIGH COURT OF JUDICATURE
AT FORT WILLIAM IN BENGAL UNDER SECTION
122**

ORDER I

Rule 8

In sub-rule (1) for the first sentence commencing with the words "Where there are" and ending with "persons so interested" substitute the following —

"Where there are numerous persons having the same interest in one suit, the Court may direct that one or more such persons may sue or be sued, or may defend, in such suit, on behalf of, or for the benefit of, all persons so interested "

(Notification No 3905-G , dated the 2nd April, 1938)

ORDER IV

Rule 2

Insert the following words after the words "particulars of every suit" —

"except suits triable by a court invested within the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 "

The rule will come into operation on and from the 1st January 1939

(Notification No 8579-G , dated the 26th July, 1938)

ORDER V

Rule 5.

Insert the words "for the ascertainment whether the suit will be contested" after the words "issues only "

(Notification No 12421-G , dated the 25th August, 1927)

Rules 15 and 17

Cancel rules 15 and 17 and substitute therefor the following —

"15 Where in any suit the defendant is absent from his residence at the time when service is sought to be effected on

him

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER V—*contd*

him thereat and there is no likelihood of his being found thereat within a reasonable time, then unless he has an agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him

Provided that where such adult male member has an interest in the suit and such interest is adverse to that of the defendant, a summons so served shall be deemed for the purposes of the third column of Article 164 of Schedule I of the Limitation Act, 1908, not to have been duly served

Explanation—A servant is not a member of the family within the meaning of this rule "

"17 Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is absent from his residence at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person upon whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed "

(Notification No 10428-G, dated the 25th July, 1928)

Rule 19

Cancel rule 19 and substitute therefor the following —

"19 Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the declaration of the serving officer, and may, if it has been so verified, examine the serving officer, on oath, or cause him to be so examined by another Court, touching his proceedings,

and

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER V—*concl'd*

and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit ”

(Notification No 10428-G , dated the 25th July, 1928)

Rule 19A

Insert the following after rule 19 —

“19 A A declaration made and subscribed by a serving officer shall be received as evidence of the facts as to the service or attempted service of the summons ”

(Notification No 10428-G , dated the 25th July, 1928)

ORDER VI

Rule 14A

Insert the following after rule 14 —

“14A Every pleading when filed shall be accompanied by a statement in a prescribed form, signed as provided in rule 14 of this Order, of the party's address for service. Such address may from time to time be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition. The address so given shall be called the registered address of the party and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purposes of execution, and shall hold good subject as aforesaid for a period of two years, after the final determination of the cause or matter. Service of any process may be effected upon a party at his registered address in like manner in all respects as though such party resided thereat ”

(Notification No 10428-G , dated the 25th July, 1928)

ORDER VII

Rule 3

After rule 3, add the words —

“and where the area is mentioned, such description shall further state the area according to the notation used in the
record

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER VII—*contd*

record of settlement or survey, with or without, at the option of the party, the same area in terms of the local measures ”

(Rule No 11 of 1918)

Rule 9

Cancel clause (1) and substitute therefor the following —

“(1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it

(1A) The plaintiff shall present with his plaint —

- (i) as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements,

“(ii) draft forms of summons and fees for the service thereof]”

(Notification No 10428-G , dated the 25th July, 1928)

Rule 11

Add the following as clause (e) —

“(e) Where any of the provisions of rule 9 (1A) is not complied with and the plaintiff on being required by the Court to comply therewith within a time to be fixed by the Court, fails to do so ”

(Notification No 10428-G , dated the 25th July, 1928)

ORDER IX

Rule 9

(a) *Renumber sub-rule (2), as sub-rule (3) and insert therein after the words “notice of the application,” the words “with a copy thereof (or concise statement as the case may be) ”*

(b) Insert

¹ Substituted by Notification No 3516 G , dated the 3rd February 1933

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER IX—contd

(b) Insert the following as sub-rule (2) —

“(2) The plaintiff shall, for service on the Opposite Parties, present along with his application under this rule either—

- (i) as many copies thereof on plain paper as there are Opposite Parties, or,
- (ii) if the Court by reason of the length of the application or the number of Opposite Parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements ”

Rule 13

Renumber Rule 13, as Rule 13 (1) and add the following as Rule 13 (2) —

“(2) The defendant shall, for service on the Opposite Party, present along with his application under this rule either—

- (i) as many copies thereof on plain paper as there are Opposite Parties, or,
- (ii) if the Court by reason of the length of the application or the number of Opposite Parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements ”

Rule 14

Cancel the word “thereof” and substitute therefor the following words —

“together with a copy thereof (or concise statement as the case may be) ”

(Notification No 3516-G , dated the 3rd February, 1933)

ORDER XVI

Rule 2

Cancel clauses (1) and (2) and substitute therefor the following —

“(1) The Court shall fix in respect of each summons such a sum of money as appears to the Court to be sufficient to defray

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XVI—contd

defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance

(2) In fixing such an amount the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case "

(Notification No 10428-G , dated the 25th July, 1928)

Rule 3.

Cancel rule 3 and substitute therefor the following —

"3 The sum so fixed shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally "

(Notification No 10428-G , dated the 25th July, 1928)

Rule 4.

Cancel clause (1) and substitute therefor the following —

"(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum so fixed is not sufficient to cover such expenses or reasonable remuneration the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons, or the Court may discharge the person summoned, without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid "

(Notification No 10428-G , dated the 25th July, 1928)

Rule 7A

Insert the following after rule 7 —

"7A (i) Except where it appears to the Court that a summons under this Order should be served by the Court in the

same

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XVI—*contd*

same manner as a summons to a defendant, the Court shall make over for service all summonses under this Order to the party applying therefor. The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

(u) Rules 16 and 1b of Order V shall apply to summons personally served under this rule, as though the person effecting service were a serving officer.

(v) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or if for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in like manner as a summons to a defendant."

(Notification No 10428-G, dated the 25th July, 1928)

Rule 8

Cancel rule 8 and substitute therefor the following —

'8 (1) Every summons under this Order not being a summons made over to a party for service under rule 7A (i) of this Order, shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply thereto.

(2) The party applying for a summons to be served under this rule shall, before the summons is granted and within a period to be fixed, pay into Court the sum fixed by the Court under rule 2 of this Order."

(Notification No 10428-G, dated the 25th July, 1928)

Rule 21

Cancel rule 21 and substitute therefor the following —

'21 (1) When any party to a suit is required by any other party thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.

(2) When

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XVI—*concl'd*

(2) When any party to a suit gives evidence on his own behalf, the Court may in its discretion permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing "

(Notification No 15264-G , dated the 11th November, 1927)

ORDER XVIII

Rule 2A

Insert the following as rule 2A —

'2A Notwithstanding anything contained in clauses (1) and (2) of rule 2, the Court may for sufficient reason go on with the hearing, although the evidence of the party having the right to begin has not been concluded, and may also allow either party to produce any witness at any stage of the suit "

(Notification No 15165-G , dated the 8th November, 1927 ,

ORDER XXI

Rule 1

For Rule 1, substitute the following —

"1 (1) All money payable under a decree shall be paid as follows, namely —

- (a) By deposit in or by postal money order sent to the Court whose duty it is to execute the decree, or
- (b) Out of Court to the decree-holder, or
- (c) Otherwise as the Court which makes the decree directs

(2)(a) Where any payment is made under clause (a) of sub-rule (1) notice of such payment shall be given to the decree-holder or the person in whose favour the order is made

- (b) The cost of giving such notice shall be borne by the person making payment who shall have the option of having the notice served either by a process-server of the Court or by registered post. No such notice shall issue until the said cost shall have been paid "

(Notification No 1379-G , dated the 3rd February, 1938)

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XXI—contd

Rule 16

In the first proviso, cancel the words “and the decree shall not be executed until the Court has heard their objections (if any) to its execution” and substitute therefor the following words —

“and until the Court has heard their objections (if any) the decree shall not be executed provided that if, with the application for execution, an affidavit by the transferor admitting the transfer or an instrument of transfer duly registered be filed, the Court may proceed with the execution of the decree pending the hearing of such objections ”

Rule 17

In sub-rule (1), cancel the words “the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it” and substitute therefor the following words —

“the Court shall allow the defect to be remedied then and there or within a time to be fixed by it If the defect is not remedied within the time fixed the Court may reject the application ”

Rule 22

Add the following as sub-rule (3) —

“(3) Omission to issue a notice in a case where notice is required under sub-rule (1), or to record reasons in a case where notice is dispensed with under sub-rule (2), shall not affect the jurisdiction of the Court in executing the decree ”

Rule 24

Add the following to sub-rule (3) —

“and a day shall also be specified on or before which it shall be returned to the Court ”

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXI—contd.

Rule 26

In sub-rule (3), cancel the words "the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit" and substitute therefor the following words —

"the Court shall require security from the judgment-debtor unless sufficient cause is shown to the contrary"

Rule 31

Substitute the words "three months" for the words "six months" in sub-rules (2) and (3)

Rule 32

Substitute the words "three months" for the words "one year" in sub-rule (3)

Rule 39

Omit the words "in the civil prison" in sub-rule (5)
(Notification No. 3516-G, dated the 3rd February, 1933)

Rule 43

Rule 43, shall read as follows —

"43 Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and, save as otherwise prescribed, the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof

Provided that when the property seized does not, in the opinion of the attaching officer, exceed twenty rupees in value or is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once "

(Notification No 25585-G, dated the 3rd November, 1933)

Rule 45

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XXI—*contd.*

Rule 45

Add the following to sub rule (1) —

“and the applicant shall deposit in Court such sum as the Court shall require in order to defray the cost of watching or tending the crop till such time ”

(Notification No 3516-G , dated the 3rd February, 1933)

Rules 46(A) to 46(H)

Add the following after Rule 46 —

46(A) The Court may in case of a debt, other than a debt secured by a mortgage or a charge or by a negotiable instrument, which has been attached under rule 46 or 51 of this order, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so

Provided that if the debt in respect of which the application aforesaid is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge will deal with it in the same manner as if the case had been originally instituted in that Court

Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor

46(B) Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution or does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him

46(C)

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXI—contd.

46(C) Where the garnishēe disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders upon the parties as may seem just

46(D) Where it is suggested or appears to be probable that the debt belongs to some third person or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim (if any) to such debt and prove the same

46(E) After hearing such third person and any other person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest if any of such third or other person as may seem fit and proper

46(F) Payment made by the garnishee on a notice under rule 46 (A) or under any such order as aforesaid shall be valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied although such judgment may be set aside or reversed

46(G) The costs of any application made under rule 46(A) and of any proceeding arising therefrom or incidental thereto, shall be in the discretion of the Court

46(H) An order made under rules 46(B), 46(C) or 46(E) shall be appealable as a decree "

(Notification No 1854-G , dated the 26th January, 1935)

Rule 53

(a) In sub-rule (1) (b), insert after the words "then by the issue to such other Court" the words "and to any Court to which it has been transferred for execution" and also insert therein the words "or Courts" after the words "requesting such other Court "

(b) In sub-rule (1) (b) (i), cancel the words "to execute its own decree" and substitute therefor the words "to execute the

attached

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXI—contd.

attached decree with the consent of the said decree-holder expressed in writing or the permission of the attaching Court "

(c) In sub-rule (4), insert after the words "by sending to such other Court" the words "and to any Court to which it has been transferred for execution"

(d) In sub-rule (6), substitute the words "in contravention of the said order with knowledge thereof" for the words "in contravention of such order after receipt of notice thereof"

Rule 54

Add the following as sub-rule (3) —

"(3) Such order shall take effect, where there is no consideration for such transfer or charge, from the date of the order, and where there is consideration for such transfer, or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged, or from the date when the order is proclaimed under sub-rule (2) whichever is earlier "

Rule 57

Add the following words at the end —

"unless the Court shall make an order to the contrary "

Rule 58

Add the following words at the end of sub-rule (2) —

"upon such terms as to security, or otherwise, as to the Court shall seem fit "

(Notification No 3516-G, dated the 3rd February, 1933)

Rule 63A

Add the following as Rule 63A —

"63A When an attachment of moveable property ceases the Court may order the restoration of the attached property to the person in whose possession it was before the attachment "

(Notification No 25585-G, dated the 3rd November, 1933)

Rule 66.

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXI—contd.

Rule 66

After the word "property" in clause (e), sub-rule (2), add
the following proviso —

' Provided that it shall not be necessary for the Court itself
to give its own estimate of the value of the property
but the proclamation shall include the estimate, if
any, given by either or both of the parties "

(Notification No 8575-G , dated the 26th July, 1938)

 Rule 69

Substitute the words "one calendar month" for the words
"seven days" in sub-rule (2)

 Rule 75

(a) Insert the following words in sub-rule (2) after the words
"where the crop from its nature does not admit of being
stored" —

"or can be sold to greater advantage in an unripe state (e g ,
as green wheat) "

(b) Cancel the word "and" between the words "tending"
and "cutting" in sub-rule (2), and substitute therefor the word
"or "

 Rule 89

In sub-rule (1), cancel the words "either owning such pro-
perty or holding an interest therein by virtue of a title acquired
before such sale" and substitute the words "whose interest is
affected by such sale (provided that such interest has not been
voluntarily acquired by him after such sale) "

 Rule 90

(a) Add the following words to Rule 90 (1) —

"or on the ground of failure to issue notice to him as required
by rule 22 of this Order "

(b) Cancel

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXI—concl'd

(b) Cancel the proviso to Rule 90 (1), and substitute therefor
the following —

“Provided (i) that no sale shall be set aside on the ground
of such irregularity, fraud or failure unless, upon the facts
proved, the Court is satisfied that the applicant has sustained
substantial injury by reason of such irregularity, fraud or
failure

(ii) That no sale shall be set-aside on the ground of any
defect in the proclamation of sale at the instance of any person
who after notice did not attend at the drawing up of the pro-
clamation or of any person in whose presence the proclamation
was drawn up, unless objection was made by him at the time
in respect of the defect relied upon ”

—

Rule 98

Insert the words “or on his behalf” after the words “at his
instigation” wherever they occur

—

Rule 99

Insert the words “to have a right” after the words “in
good faith ”

(Notification No 3516-G , dated the 3rd February, 1933)

—

ORDER XXIA

Insert the following as Order XXIA —

“1 Every person applying to a Civil Court to attach moveable
property shall, in addition to the process-fee, deposit such
reasonable sum as the Court may direct if it thinks necessary,
for the cost of its removal to the court-house, for its custody,
and, if such property is livestock, for its maintenance according
to the rates prescribed in Rule 2 of this Order. If the deposit,
when ordered, be not made, the attachment shall not issue.
The Court may, from time to time, order the deposit of such
further fees as may be necessary. In default of due payment
the property shall be released from attachment

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXIA—contd

2 The following daily rates shall be chargeable for the custody and maintenance of livestock under attachment —

- Goat and pig—Annas 2 to annas 4
- Sheep—Annas 2 to annas 3
- Cow and bullock—Annas 6 to annas 10
- Calf—Annas 3 to annas 6
- Buffalo—Annas 8 to annas 12
- Horse—Annas 8 to annas 12
- Ass—Annas 3 to annas 5
- Poultry—Annas 2 to annas 3 pies 6

Explanation—Although the rates indicated above are regarded as reasonable, the Courts should consider individual circumstances and the local conditions and permit deposit at reduced rates where the actual expenses are likely to fall short of the minima or maxima. If any specimen of special value in any of the above classes is seized a special rate may be fixed by the Court. If any animal not specified is attached, the Court may fix the cost as a special case.

3 When the property attached consists of agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to Rule 43, Order 21, he may, unless the Court has otherwise directed, leave it in the village or place where it has been attached—

- (a) in the charge of the judgment-debtor or decree-holder or of some other person, provided that the judgment-debtor, decree-holder or other person enters into a bond in Form No 15A of Appendix E to this Schedule with one or more sureties for the production of the property when called for, or,
- (b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of fifteen days paid in advance

4 If attached property (other than livestock) is not sold under the proviso to Rule 43, Order 21, or retained in the village
or place

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XXIA—*contd*

or place where it is attached, it shall be brought to the court-house at the decree-holder's expense and delivered to the proper officer of the Court. In the event of the decree-holder failing to make his own arrangement for the removal of the property with safety, or paying the cost thereof in advance to the attaching officer, then, unless such payment has previously been made into Court, the attachment shall at once be deemed to be withdrawn and the property shall be made over to the person in whose possession it was before attachment.

5 When livestock is attached it shall not, without the special order of the Court, be brought to the Court or its compound or vicinity, but shall be left at the village or place where it was attached in the manner and on the conditions set forth in Rule 3 of this Order.

Provided that livestock shall not be left in the charge of any person under clause (a) of the said rule unless he enters into a bond for the proper care and maintenance thereof as well as for its production when called for, and that it shall not be left in charge of an officer of the Court under clause (b) of the said rule unless in addition to the requirements of the said clause provision be made for its care and maintenance.

6 When for any reason the attaching officer shall find it impossible to obtain compliance with the requirements of the preceding rule so as to entitle him to leave the attached livestock in the village or place where it was attached and no order has been made by the Court for its removal to the Court, the attaching officer shall not proceed with the attachment and no attachment shall be deemed to have been effected.

7 Whenever it shall appear to the Court that livestock under attachment are not being properly tended or maintained, the Court shall make such orders as are necessary for their care and maintenance and may if necessary direct the attachment to cease and the livestock to be returned to the person in whose possession they were when attached. The Court may order the decree-holder to pay any expenses so incurred in providing for the care and maintenance of the livestock, and may direct that any sum so paid shall be refunded to the decree-holder by any other party to the proceedings.

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XXIA—*contd*

8 If under a special order of the Court livestock is to be conveyed to the Court, the decree-holder shall make his own arrangement for such removal, and if he fails to do so the attachment shall be withdrawn and the property made over to the person in whose possession it was before attachment

9 Nothing in these rules shall prevent the judgment-debtor or any person claiming to be interested in attached livestock from making such arrangements for feeding, watering and tending the same as may not be inconsistent with its safe custody, or contrary to any order of the Court

10 The Court may direct that any sums which have been legitimately expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the sale-proceeds of the attached property, if sold, or be paid by the person declared entitled to delivery before he receives the same. The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings

11 In the event of the custodian of attached property failing, after due notice, to produce such property at the place named to the officer deputed for the purpose, or to restore it to its owner if so ordered or failing in the case of livestock to maintain and take proper care thereof, he shall be liable to be proceeded against for the enforcement of his bond in the execution proceedings

12 When property other than livestock is brought to the Court, it shall immediately be made over to the Nazir, who shall keep it on his sole responsibility in such place as may be approved by the Court. If the property cannot from its nature or bulk be conveniently stored, or kept on the Court premises or in the personal custody of the Nazir, he may, subject to the approval of the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical. If any premises are to be hired and persons are to be engaged for watching the property the Court shall fix the charges for the premises and the remuneration to be allowed to the persons (not being officers of the

Court)

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXIA—concl'd

Court) in whose custody the property is kept All such costs shall be paid into Court by the decree-holder in advance for such period as the Court may from time to time direct

13 When attached livestock is brought to Court under special order as aforesaid it shall be immediately made over to the Nazir, who shall be responsible for its due preservation and safe custody until he delivers it up under the orders of the Court

14 If there be a pound maintained by Government or local authority in or near the place where the Court is held, the Nazir shall, subject to the approval of the Court, be at liberty to place in it such livestock as can be properly kept there, in which case the pound keeper will be responsible for the property to the Nazir and shall receive from the Nazir the same rates for accommodation and maintenance thereof as are paid in respect of unpounded cattle of the same description

15 If there be no pound available, or, if in the opinion of the Court, it be inconvenient to lodge the attached livestock in the pound, the Nazir may keep them in his own premises, or he may entrust them to any person selected by himself and approved by the Court

16 All costs for the keeping and maintenance of the livestock shall be paid into Court by the decree-holder in advance for not less than fifteen days at a time as often as the Court may from time to time direct In the event of failure to pay the costs within the time fixed by the Court the attachment shall be withdrawn and the livestock shall be at the disposal of the person in whose possession it was at the time of attachment

17 So much of any sum deposited or paid into Court under these rules as may not be expended shall be refunded to the depositor "

(Notification No 25585-G dated the 3rd November, 1933.)

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XXII

Rule 4

(a) At the end of sub-rule (3), delete the period and add the following words —

“except as hereinafter provided”

(b) Insert the following as sub-rule (4) —

“(4) the Court, whenever it sees fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or has failed to appear and contest the suit at the hearing, and judgment may in such case be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place ”

(Notification No 3905-G , dated the 2nd April, 1938)

Rule 11

Add the following —

“Provided always that where an Appellate Court has made an order dispensing with service of notice of appeal upon legal representatives of any person deceased under Order XLI, rule 14 (3), the appeal shall not be deemed to abate as against such party and the decree made on appeal shall be binding on the estate or the interest of such party ”

(Notification No 10428-G , dated the 25th July, 1928)

ORDER XXVI

Rule 9.

Omit the proviso

(Notification No 11223-G , dated the 7th June, 1933)

ORDER XXXII

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XXXII

Rule 4

Substitute the words "Except as otherwise provided in this Order," for the words "Where there is no other person fit and willing to act as guardian for the suit," in clause (4)

(Notification No 8318-G , dated the 13th June, 1927)

ORDER XXXIV

Rule 4

Renumber sub rules (3) and (4), as sub-rules (4) and (5) respectively and insert the following as sub-rule (3) —

"(3) The Court may in its discretion direct in the decree for sale that if the proceeds of the sale are not sufficient to pay the mortgage debt, the mortgagor shall pay the balance personally "

(Notification No 3516-G , dated the 3rd February, 1933)

ORDER XXXVII

Rule 1

In Rule 1,—

(a) in clause (c) the word "and" shall be omitted,

(b) after clause (c) the following clause shall be inserted,
namely —

"(cc) all civil courts (except courts of small causes) in the districts of Chittagong, Dacca, Pabna and 24-Parganas, and "

(Notification No 27206-G , dated the 29th November, 1933)

ORDER XXXIX

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

ORDER XXXIX

Rule 1

*Renumber Rule 1, as Rule 1 (1) and add the following as
sub-rules (2) and (3) —*

“(2) In case of disobedience, or of breach of the terms of such temporary injunction or order, the Court granting the injunction or making such order may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release

(3) The property attached under sub-rule (2) may, when the Court considers it fit so to direct, be sold and, out of the proceeds, the Court may award such compensation to the injured party as it finds proper and shall pay the balance, if any, to the party entitled thereto ”

(Notification No 3516-G, dated the 3rd February, 1933)

ORDER XLI

Rule 14

Insert the following as clause (3) —

“(3) It shall be in the discretion of the Appellate Court to make an order, at any stage of the appeal whether on its own motion, or *ex parte*, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of or at any proceeding subsequent to the decree of that Court or on the legal representatives of any such respondent

Provided that—

- (a) The Court may require notice of the appeal to be published in any newspaper or newspapers as it may direct
- (b) No such order shall preclude any such respondent or legal representative from appearing to contest the appeal ”

(Notification No 8318-G, dated the 13th June, 1927)

ORDER XLII

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

ORDER XLII

Rule 1

For Rule 1, substitute the following —

“1 The Rules of Order 41 shall apply, so far as may be,
to appeals from Appellate Decrees

Provided that every memorandum of Appeal from an
Appellate Decree shall be accompanied by a copy of the decree
appealed from and also (unless the Court sees fit to dispense
with any or all of them), by copies of the judgment on which
the said decree is founded and of the judgment and decree of
the Court of first instance ”

(Notification No 1750-G., dated the 15th February, 1938)

ORDER XLIII

Rule 1

Insert the following after clause (i) —

“(1) (a) An order under rule 57 of Order XXI, directing that
an attachment shall cease or directing or omitting to direct that
an attachment shall continue ”

(Notification No 3516-G , dated the 3rd February, 1933)

ORDER XLVIII

Rule 1

Cancel clause (2), and substitute therefor the following —

“(2) The court-fee chargeable for such service shall be paid
when the process is applied for, or within such time, if any, as
the Court may, when ordering its issue, fix for the purpose ”

(Notification No 1154-G , dated the 17th January, 1934)

Rule 3

Insert the following words after the word “appendices” —

“or such other forms as may be prescribed by the High Court
of Judicature at Fort William in Bengal ”

(Notification No 7987-G , dated the 18th April, 1935)

(Rules made by the High Court of Judicature at Fort William in Bengal under Section 122)

APPENDIX A

Form No 13

In the form of "Breach of agreement to purchase land," cancel the word "bighas" and substitute therefor the words "acres" "bighas"

(Rule No 11 of 1918)

APPENDIX B

Form No 1A

Insert the following form and number it as 1A —

"No 1A

SUMMONS TO DEFENDANT FOR ASCERTAINMENT WHETHER THE SUIT WILL BE CONTESTED (Order 5, rules 1 and 5)

(Title)

To

(Name, description and place of residence)

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit on the day of 19, at o'clock in the noon in order that on that day you may inform the Court whether you will or will not contest the claim either in whole or in part and in order that in the event of your deciding to contest the claim either in whole or in part directions may be given you as to the date upon which your written statement is to be filed and the witness or witnesses upon whose evidence you intend to rely in support of your defence are to be produced and also the document or documents upon which you intend to rely

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence and take further notice that in the event of your admitting the claim either in whole or in part the Court will forthwith pass judgment in accordance with such admissions

Given 48E

(Rules made by the High Court of Judicature at Fort William in Bengal under Section 122)

APPENDIX B—contd

Given under my hand and the seal of the Court, this day of 19

Judge

Seal

NOTICE—If you admit the claim either in whole or in part you should come prepared to pay into Court the money due by virtue of such admission together with the costs of the suit, to avoid execution of any decree which may be passed against your person or property, or both”

(Notification No 12421-G , dated the 25th August, 1927)

Form No 10

Insert the words “(or proof of the above having been duly made by the declaration of)” after the words “proof of the above having been duly taken by me on the oath of ”

(Notification No 10428-G , dated the 25th July, 1928)

Form No 11

Substitute the following for the existing Form No 11 —

“No 11

DECLARATION OF PROCESS SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (Order 5, rule 18)

(Title)

I, , a process-server of this Court declare —(1) On the day of 19 , I received a summons/notice issued by the Court of in suit No of 19 , in the said Court, dated day of 19 , for service on (2) The said was at the time personally known to me, and I served the said summons/notice on him/her on the day of 19 , at about o'clock in the noon at by tendering a copy

(Rules made by the High Court of Judicature at Fort William in Bengal under Section 122)

APPENDIX B—contd

a copy thereof to him/her and requiring his/her signature to the original summons/notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process-server

Or

(2) The said _____ not being personally known to me _____ pointed out to me a person whom he stated to be the said _____, and I served the said summons/notice on him/her on the _____ day of 19 _____, at about _____ o'clock in the _____ noon at _____ by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

Or

(2) The said _____ and the house in which he ordinarily resides being personally known to me, I went to the said house, in _____ and there on the _____ day of 19 _____, at about _____ o'clock in the _____ noon, I did not find the said _____

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served with special reference to Order 5, rules 15 and 17

(b) Signature of process server

Or

(2) One

483

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

APPENDIX B—concl'd

(2) One _____ at _____ pointed out to me
which he said was the house in which
ordinarily resides I did not find the said _____ there

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served
with special reference to Order 5, rules 15 and 17

(b) Signature of process-server

Or

(3) If substituted service has been ordered, state fully and
exactly the manner in which the summons was served with
special reference to the terms of the order for substituted
service "

(Notification No 10428-G, dated the 25th July, 1928)

APPENDIX D

Form No 1

Cancel the table under the head "Costs of suit" in Form
No 1 and substitute therefor the following —

| " Plaintiff | Rs A P | Defendant | Rs A P |
|---------------------------------------------------------------------------------------|--------|---------------------------------------------------------------------------------------|--------|
| 1 Stamp for plaint | | 1 Stamp for power | |
| 2 Stamp for power | | 2 Stamp for petitions and affidavits | |
| 3 Stamp for petitions and affidavits | | 3 Cost of exhibits including copies made under the Bankers' Book's Evidence Act, 1891 | |
| 4 Cost of exhibits including copies made under the Bankers' Book's Evidence Act, 1891 | | 4 Pleadings' fee | |

Form No 1—cont'd

(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)

APPENDIX D—contd

| "Plaintiffs | Rs. A. P. | Defendants | Rs. A. P. |
|------------------------------------------------------------------------------------------------------|-----------|------------------------------------------------------------------------------------------------------|-----------|
| 5 Pleaders' fee on Rs . | | 5 Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge) | . |
| 6 Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge) | | 6 Process fees | . |
| 7 Process fees | | 7 Commissioners' fees | . |
| 8 Commissioners' fees | | 8 Demi paper | . |
| 9 Demi paper | | 9 Cost of transmission of records | . |
| 10 Cost of transmission of records | | 10 Other costs allowed under the Code and General Rules and Orders | . |
| 11 Other costs allowed under the Code and General Rules and Orders | | 11 Adjournment costs not paid in cash (to be deducted or added as the case may be) | " |
| 12 Adjournment costs not paid in cash (to be added or deducted as the case may be) | | | |

(Notification No 15264G, dated the 11th November, 1927)

Form No 2

Cancel the table under the head "Costs of suit" in Form No 2 and substitute therefor the following —

| "Plaintiff | Rs. A. P. | Defendant | Rs. A. P. |
|------------------------------------------------------------------------------------------------------|-----------|------------------------------------------------------------------------------------------------------|-----------|
| 1 Stamp for plaint | | 1 Stamp for power | |
| 2 Stamp for power | | 2 Stamp for petitions and affidavits | |
| 3 Stamp for petitions and affidavits | | 3 Cost of exhibits including copies made under the Bankers' Book's Evidence Act, 1891 | |
| 4 Cost of exhibits including copies made under the Bankers' Book's Evidence Act, 1891 | | 4 Pleaders' fee | |
| 5 Pleaders' fee on Rs | | 5 Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge) | |
| 6 Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge) | | 6 Process fees | |
| 7 Process fees | | 7 Commissioners' fees | |
| 8 Commissioners' fees | | 8 Demi paper | |
| 9 Demi paper | | 9 Cost of transmission of records | |
| 10 Cost of transmission of records | | 10 Other costs allowed under the Code and General Rules and Orders | |
| 11 Other costs allowed under the Code and General Rules and Orders | | 11 Adjournment costs not paid in cash (to be deducted or added as the case may be) | " |
| 12 Adjournment costs not paid in cash (to be added or deducted as the case may be) | | | |

(Rules made by the High Court of Judicature at Fort William in Bengal under Section 122)

APPENDIX D—concl'd

2 This rule will come into force from the 1st January, 1928 "

(Notification No 15264-G , dated the 11th November, 1927)

APPENDIX E

Insert the following after Form No 15, Appendix E —

“Form No 15A

Bond for safe custody of moveable property attached and left in charge of any persons and sureties

[ORDER XXIA, RULES 3 (a) AND 5]

In the Court of _____ at _____
Civil Suit No _____ of _____
A B of _____
against _____
C D of _____

Know all men by these presents that we, I J of _____
etc , and K L of _____ , etc , and M N of _____
etc , are jointly and severally bound to the Judge of the Court
of _____ in Rupees _____ to be paid to the
said Judge, for which payment to be made we bind ourselves,
and each of us, in the whole, our and each of our heirs,
executors and administrators, jointly and severally, by these
presents

Dated this _____ day of _____ 19 _____

And whereas the moveable property/livestock specified in the
schedule hereunto annexed has been attached under a warrant
from the said Court, dated the _____ day of _____ 19 _____,
in execution of a decree in favour of _____ in suit No
of _____ 19 _____ , on the file of _____ , and the said
property has been left in the charge of the said I J

Now

*(Rules made by the High Court of Judicature at Fort William
in Bengal under Section 122)*

APPENDIX E—*concl'd*

Now the condition of this obligation is that, if the above bounden I J shall duly account for and produce when required before the said Court all and every the property/livestock aforesaid [and shall properly maintain and take due care of the livestock aforesaid] and shall obey any further order of the Court in respect thereof, then this obligation shall be void otherwise it shall remain in full force and be enforceable against the above bounden I J in the execution proceedings

I J

K L

M N

Signed and delivered by the above
bounden in the presence of

(Notification No 25585-G , dated the 3rd November, 1933)

APPENDIX G

Form No 9

*In the form of "Decree in Appeal" cancel the words from
"Memorandum of appeal" to "the following reasons, namely" —*

(Rule No 11 of 1910)

APPENDIX H

Form No. 14

Cancel columns 20 to 27 Register of Civil Suits, and substitute therefor the following columns —

| Execution | | Return of Executions | |
|-----------|---------------------------------------------------------------------------------------------------|----------------------|----------------------------------------------------------------------------------------------------------|
| 20 | Number of execution application as per execution application register and the date of application | 26 | Adjustments and satisfaction reported, if any |
| 21 | Relief sought If money, amount claimed | 27 | Amount paid into court |
| 22 | Order and date thereof If portion of relief not granted, what portion | 28 | Persons arrested |
| 23 | Against whom order made | 29 | Whether judgment debtor committed to jail, if not, why not If committed to jail the period of stay in it |
| 24 | For what, amount to be stated | 30 | Minute of other return, other than arrest and payment |
| 25 | Amount of costs | 31 | Amount of relief still due and why execution petition is closed |
| | | 32 | If petition infructuous, why and to what extent |
| | | 33 | Appeal, if any, against order in execution and if so, the result |

(Notification No 3516-G, dated the 3rd February, 1933)

(Rules made by the High Court of Judicature at Fort William in Bengal under Section 122)

Civil Procedure

[ACT V

OF 1908]

Civil Procedure

(Rules made by the High Court of Judicature at Madras under section 122)

APPENDIX II.

RULES MADE BY THE HIGH COURT OF JUDICATURE AT MADRAS UNDER SECTION 122

ORDER III

Rule 5

At the end insert the following —

“Explanation—Service on a pleader who does not act for his client shall not raise the presumption under this rule ”

(R O C No 1810 of 1926)

ORDER IV

Rule 2

In Order IV, delete sub-rule (2) of rule 2 added under Dis No 908 of 1912, and re-number the existing rule 2 (1) as rule 2

[G O No 2606, Law (General), dated 6th August 1928]

ORDER V

Rule 5

Delete the first paragraph and substitute the following in lieu thereof —

“5 The Court shall determine, at the time of issuing the summons, whether it shall be—

(1) for the settlement of issues only, or (2) for the defendant to appear and state whether he contests or does not contest the claim and directing him if he contests to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest for final disposal of the suit at once, or (3) for the final disposal of the suit, and the summons shall contain a direction accordingly ”

Summons to be either (1) to settle issues, or (2) to ascertain whether the suit is contested or not or (3) for final disposal

(P Dis No 7 of 1927)

Rule 15

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER V—contd

Rule 15

Delete the words "the defendant cannot be found" and in lieu thereof insert the words "the defendant is absent"

(R O C No 1810 of 1926)

Rule 18A (new)

Insert the following as rule 18A —

Chief Ministerial
Officer District
Courts, may be
empowered to
order issue of
fresh summons

"18A A District Judge, within the meaning of the Madras Civil Courts Act, 1873, may delegate to the Chief Ministerial Officer of the District Court the power to order the issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within seven days after the return has been notified on the notice board"

(P D's No 777 of 1929)

Rules 25 and 26

Substitute the following for rules 25 and 26 —

Service where
defendant
resides out of
British India
and has no
Agent

"25 Where the defendant resides out of British India and has no Agent in British India empowered to accept service, the summons may be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate

Provided that, if, by any arrangement between the Local Government of the Province in which the Court issuing the summons is situate and the Government of the foreign territory in which the defendant resides, the summons can be served by an officer of the Government of such territory, the summons may be sent to such officer in such manner as by the said arrangement may have been agreed upon

26 Where—

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER V—contd

26 Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor-General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

Service in foreign territory through Political Agent or Court or by special arrangement

(b) the Governor-General in Council has, by notification in the Gazette of India, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service, or

(c) by any arrangement between the Local Government of the Province in which the Court issuing the summons is situate and the Government of the foreign territory in which the defendant resides the summons can be served by an officer of the Government of such territory,

the summons may be sent to such Political Agent or Court, or in such manner as may have been agreed upon to the proper officer of the Government of the foreign territory by post or otherwise, for the purpose of being served upon the defendant, and, if the summons is returned with an endorsement signed by such Political Agent or by the Judge or other officer of the Court or by the officer of the Government of the foreign territory that the summons has been served on the defendant in manner hereinbefore directed such endorsement shall be deemed to be evidence of service "

(Dis No 40 of 1917)

Rules 27 and 28

(a) In rule 27 after the words "send it" insert the words "by registered post prepaid for acknowledgment "

(b) In rule 28 after the words "shall send" insert the words "by registered post prepaid for acknowledgment "

(Dis No 209 of 1912)

Rule 29A (new)

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER V—concl'd

Rule 29A (new)

Insert as rule 29A —

“29A Notwithstanding anything contained in the foregoing rules, where the defendant is a public officer (not belonging to His Majesty’s military or naval forces or His Majesty’s Indian Marine Service) sued in his official capacity, service of summons shall be made by sending a copy of the summons to the defendant by registered post prepaid for acknowledgment together with the original summons, which the defendant shall sign and return to the Court which issued the summons ”

(Dis No 209 of 1912)

ORDER VII

Rule 9

In rule 9 after the word “and” occurring in the third line delete the comma and the five words following, viz , “if the plaint is admitted” and insert the expression “along with the plaint” after the words “shall present ”

(R O C No 1810 of 1926)

ORDER IX

Rule 13

(a) Re-number rule 13 as rule 13 (1)

(Dis No 621 of 1914)

(b) Insert the following as proviso to sub-rule (1) —

“Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it be satisfied that the defendant had notice of the date of hearing in sufficient time to appear and answer the plaintiff’s claim ”

(R O C No 1810 of 1926)

(c) Add

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER IX—contd

(c) Add the following as sub-rule (2) —

“(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1) ”

(Dis No 621 of 1914)

 Rule 15

Add the following as rule 15 —

“15 (1) Rules 6, 13 and 14 shall apply *mutatis mutandis* to those proceedings in execution falling within section 47 of the Code in which notice to the opposite party is required under the provisions of the Code Setting a side ex parte order in execution.

(2) Subject to the provisions of sub-rule (2) of rule 13, an application under this rule shall be made within thirty days of the date of the order, or, where the notice was not duly served of the date when the applicant has knowledge of the order ”

(Madras High Court Notification dated the 6th March 1933)

 ORDER XII

Rule 6

Re-number the existing rule 6 as sub-rule 6 (1) and insert the following as sub-rules (2) and (3) —

“(2) The Court may also of its own motion make such order or give such judgment as it may consider just, having due regard to the admissions made by the parties

(3) Whenever an order or judgment is pronounced under the provisions of this rule a decree may be drawn up in accordance with such order or judgment and bearing the same date as the day on which the order or judgment was pronounced ”

(R O C No 1729 of 1926)

ORDER XIII

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XIII

Rule 7

Add the following proviso to rule 7 (2) —

“Provided that no document shall be returned which by force of the decree has become wholly void or useless ”

(Dis No 434 of 1916)

Rule 9

Substitute the following for the existing sub-rule (3) and re-number the existing sub-rule (4) as sub-rule (5) —

“(3) Every application for return of a document under the first proviso to sub-rule (1) shall be made by a verified petition and shall set forth facts justifying the immediate return of the original

(4) The Court may make such order as it thinks fit for the costs of any or all the parties to any application under sub-rule (1) The Court may further direct that any costs incurred in complying with or paid on application under sub-rule (1) or incurred in complying with the provisions of rule 5 of this order, shall be included as costs in the cause ”

(G O Ms No 2823-Home, dated 22nd October 1936)

(R O C No 3766 B—1 of 1934)

ORDER XV

Rule 2

Re-number rule 2 as sub-rule 2 (1) and insert the following as sub-rule (2) —

“(2) Whenever a judgment is pronounced under the provisions of this rule a decree may be drawn up in accordance with such judgment bearing the same date as the day on which the judgment was pronounced ”

(R O C No 1729 of 1926)

ORDER XVI

(Rules made by the High Court of Judicature at Madras under Section 132)

ORDER XVI

Rule 4A (new)

Insert the following as rule 4A after rule 4 —

“4A (1) Notwithstanding anything contained in the foregoing rules, in any suit by or against the Secretary of State for India in Council, no payment in accordance with rule 2 or rule 4 shall be required when an application on behalf of Government is made for summons to a Government servant whose salary exceeds Rs 10 per mensem and whose attendance is required in a Court situate more than five miles from his headquarters, and the expenses incurred by Government in respect of the attendance of the witness shall not be taken into consideration in determining costs incidental to the suit

Special provision for public servants summoned as witnesses in suits to which the Government is a party

(2) When any other party to such a suit applies for a summons to such an officer, he shall deposit in Court along with his application a sum of money for the travelling and other expenses of the officer *according to the scale prescribed by the Government under whom the officer is serving* and shall also pay any further sum that may be required under rule 4 according to the same scale, and the money so deposited or paid shall be credited to Government

(3) In all cases where a Government servant appears in accordance with this rule, the Court shall grant him a certificate of attendance ”

(Dis No 1207 of 1918 and P Dis No 22 of 1932)

Rule 21

Substitute the following for rule 21 —

“21 (1) When a party to a suit is required by any other party thereto to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as applicable

Rules in the case of parties appearing as witnesses

(2) When a party to a suit gives evidence on his own behalf, the Court may, in its discretion, permit him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing ”

[G O Ms No 402, Law (General), dated 4th February 1936]

(P Dis No 98 of 1936)

ORDER XVIII

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XVIII

Rule 2

At the end of rule 2 insert the following "Explanation" —

"Explanation —Nothing in this rule shall effect the jurisdiction of the Court, for reasons to be recorded in writing, to direct any party to examine any witness at any stage "

(R O C No 1729 of 1926)

ORDER XX

Rule 1

For rule 1 substitute the following —

"1 (1) The Court, after the case has been heard shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders

(2) The judgment may be pronounced by dictation to a shorthand writer in open Court "

(R O C No 1529—D—2/1928)

Rule 3

Substitute the following for rule 3 —

"3 The judgment shall bear the date on which it is pronounced and shall be signed by the Judge and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review, provided also that, where the Judge pronounces his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge "

(R O C No 1529—D—2/1928)

Rule 6

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XX—contd

Rule 6

(a) For sub-rule (1), the following shall be substituted —

“(1) The decree shall agree with the judgment it shall contain the number of the suit, the names and descriptions of the parties, *their addresses for service* and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit”

Contents of
decree

(R O C No 3299—B—1/1930)

(b) After sub-rule (2) the following shall be inserted as sub-rule (2A) —

“(2A) In all cases in which an element of champerty or maintenance is proved, the Court may provide in the final decree for costs on a special scale approximating to the actual expenses reasonably incurred by the defendant”

(R O C No 3019 of 1926)

Rule 11.

Substitute the following for rule 11 —

“11 (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and *after notice to the decree holder*, order that payment of the amount decreed shall be postponed, or shall be made by instalments on such terms as to the payment of interest, the attachment of the

property

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XX—concl'd

property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit "

(R O C No 2191 of 26—B1)

 Rule 12

Add the following to rule 12 —

"(3) Where an Appellate Court directs such an inquiry, it may direct the Court of First Instance to make the inquiry, and in every case the Court of First Instance shall, on the application of the decree-holder, inquire and pass the final decree "

(Dis No 550 of 1911)

 ORDER XXI

Rule 2

Substitute the following for Rule 2 (2) —

"Any party to the suit or his legal representatives or any person who has become surety for the decree debt also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified, and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly "

(R O C No 4955 of 1930—B1)

 Rule 11

(a) In sub-rule (2) of rule 11 between clauses (f) and (g) insert the following new clause —

"(ff) whether the original decree-holder has transferred any part of his interest in the decree and, if so, the date of the transfer and the name and address of the parties to the transfer "

(P Dis No 776 of 1929)

(b) Add

(Rules made by the High Court of Judicature at Madras
under Section 122)

ORDER XXI—*contd*

(b) *Add the following to sub-rule (2) (i) —*

“In an execution petition praying for relief by way of attachment of a decree of the nature specified in sub-rule (1) of rule 53 of this order, there shall not be included any other relief mentioned in this clause ”

(c) *Add the following proviso at the end of sub-rule (2) —*

“Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application ”

(G O Ms No 2084, Home, dated 2nd September, 1936—H
C P Dis No 691 of 1936, dated 13th October, 1936)

Rule 17

(a) *Substitute the following for sub-rule (1) —*

“(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with, and, if they have not been complied with, the Court may reject the application if the defect is not remedied within a time to be fixed by it ”

(b) *Add the following proviso at the end of the rule —*

“Provided that where an execution application is returned on account of inaccuracy in the particulars required under rule 11 (2) (g), the endorsement of return shall state what in the opinion of the returning officer is the correct amount ”

(G O Ms No 2084, Home, dated 2nd September, 1936—H C
P Dis No 691, of 1936, dated 13th October, 1936)

Rule 22

(a) *Substitute the following for sub-rule (1) —*

“(1) Where an application for execution is made—

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree,
or

(c) where

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

(c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in Insolvency, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution, if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him "

(G O Ms No 2084, Home, dated 2nd September 1936—H
C P Dis No 691 of 1936, dated 13th October, 1936)

(b) between sub-rules (1) and (2) insert —

"(1A) Where from the particulars mentioned in the application in compliance with rule 11(2) (ff) *supra* or otherwise the Court has information that the original decree-holder has transferred any part of his interest in the decree, the Court shall issue notice of the application to all parties to such transfer, other than the petitioner, where he is a party to the transfer "

(c) In sub-rule (1) of rule 22, after clause (b) insert the following —

"or (c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in insolvency "

(P Dis No 776 of 1929)

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

Add the following proviso to sub-rule (2)—

‘Provided that no order for execution of a decree shall be invalid owing to the omission of the Court to record its reasons unless the judgment-debtor has sustained substantial injury as the result of such omission ’

(G O Ms No 2084, Home, dated 2nd September, 1936—H C P Dis No 691 of 1936, dated 13th October, 1936)

Rule 24

Substitute the following for sub-rule (3) —

“(3) In every such process a day shall be specified on or before which it shall be executed and a day shall be specified on or before which it shall be returned to Court ”

(G O Ms No 2084-Home, dated 2nd September, 1936—H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 25

Add the following proviso to clause (2) —

‘Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause ’

(Dis No 2282 of 1916)

Substitute the following in the place of the present sub-rule (2) —

“(2) Where in the case of a decree for the payment of money the process is not executed owing to the decree having been satisfied, such officer shall also obtain an endorsement on the process to that effect signed by the decree-holder and attested by two respectable witnesses who can identify the decree-holder ”

Add

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

- (c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in Insolvency, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution, if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him "

(G O Ms No 2084, Home, dated 2nd September 1936—H
C P Dis No 691 of 1936, dated 13th October, 1936)

(b) between sub-rules (1) and (2) insert —

"(1A) Where from the particulars mentioned in the application in compliance with rule 11(2) (ff) *supra* or otherwise the Court has information that the original decree-holder has transferred any part of his interest in the decree, the Court shall issue notice of the application to all parties to such transfer, other than the petitioner, where he is a party to the transfer "

(c) In sub-rule (1) of rule 22, after clause (b) insert the following —

"or (c) where the party to the decree has been declared insolvent, against the Assignee or Receiver in insolvency "

(P Dis No 776 of 1929)

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

Add the following proviso to sub-rule (2)—

‘Provided that no order for execution of a decree shall be invalid owing to the omission of the Court to record its reasons unless the judgment-debtor has sustained substantial injury as the result of such omission ’

(G O Ms No 2084, Home, dated 2nd September, 1936—H C P Dis No 691 of 1936, dated 13th October, 1936)

Rule 24

Substitute the following for sub-rule (3) —

“(3) In every such process a day shall be specified on or before which it shall be executed and a day shall be specified on or before which it shall be returned to Court ”

(G O Ms No 2084-Home, dated 2nd September, 1936—H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 25

Add the following proviso to clause (2) —

“Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause ”

(Dis No 2282 of 1916)

Substitute the following in the place of the present sub-rule (2) —

“(2) Where in the case of a decree for the payment of money the process is not executed owing to the decree having been satisfied, such officer shall also obtain an endorsement on the process to that effect signed by the decree-holder and attested by two respectable witnesses who can identify the decree-holder ”

Add

50F

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

Add the following as sub-rule (3) —

“(3) Where the endorsement of such officer is to the effect that he is unable to execute the process, the Court shall examine him or cause him to be examined by any other Court touching his alleged inability, and may if it thinks fit, summon and examine witnesses as to such inability, and shall record the result

Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this clause

Where the inability to execute the process is stated to be due to the satisfaction of the decree and such satisfaction has been endorsed on the process as mentioned in sub-rule (2) above, the Court shall issue notice to the decree-holder to show cause on a day to be fixed by the Court, why such satisfaction should not be recorded as certified, the Court shall record the same accordingly

A record of satisfaction under the provisions of this sub-rule shall have the same effect as one under the provisions of Order XXI, rule 2, sub-rule (2) ”

Rule 31

(1) Substitute the following for sub-rules (2) and (3) —

“(2) Where any attachment under sub-rule (1) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases such compensation as it thinks fit, and shall pay the balance (if any), to the judgment-debtor on his application

(3) Where

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing it which he is bound to pay, or where, at the end of three months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease "

(2) Add the following as sub-rule (4) —

"(4) The Court may on application extend the period of three months mentioned in sub-rules (2) and (3) to such period not exceeding six months on the whole as it may think fit "

(G O Ms No 2084, Home, dated the 2nd September, 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 32

Substitute the following for sub-rules (3) and (4) —

"(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any), to the judgment-debtor on his application. The Court may on application extend the period of three months mentioned herein to such period not exceeding one year on the whole as it may think fit

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing it which he is bound to pay, or where, at the end of three months from the date of the attachment or of such extended period which the Court may order under sub-rule (3), no application to have the property sold has been made, or if made has been refused, the attachment shall cease "

(G O Ms No 2084-Home, dated 2nd September, 1936—
H C P Dis No 691 of 1936, dated 13th October, 1936)

Rule 33

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

Rule 38

Substitute the following for the present rule 38 —

“Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid, or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in rule 25 (2) above ”

Rule 39

Delete the present sub-rules (4) and (5) and substitute the following —

“(4) Such sum (if any) as the Judge thinks sufficient for the subsistence and cost of conveyance of the judgment-debtor for his journey from the Court-house to the civil prison and from the civil prison, on his release, to his usual place of residence together with the first of the payments in advance under sub-rule (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be paid to the officer in charge of the civil prison

(5) Sums disbursed under this rule by the decree-holder for the subsistence and cost of conveyance (if any) of the judgment-debtor shall be deemed to be costs in the suit ”

Rule 40

Substitute the following for rule 40 —

“40 (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

decree for the payment of money, and it appears to the Court that an insolvency petition has been presented *by or against the judgment-debtor* or that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the burden of proving the inability to pay being on the judgment-debtor, the Court may upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be

(2) Before making an order under sub-rule (1), the Court shall take into consideration any allegation of the decree-holder touching any of the following matters, namely —

- (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account,
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree,
- (c) any undue preference given by the judgment-debtor to any of his other creditors,
- (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it,
- (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree

(3) While

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court for his appearance when required by the Court

(4) A judgment-debtor released under this rule may be re-arrested

(5) Where the Court does not make an order under sub-rule (1) it shall cause the judgment debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison

Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Court before making the order of committal may leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding ten days, or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied

When the Court sees fit to leave a judgment-debtor in the custody of an officer of the Court and the judgment-debtor does not pay the costs incidental to such intermediate custody, it shall be competent for the Court to require the decree-holder, on pain of his application for arrest being disallowed, to pay into Court such sum as the Judge deems sufficient to cover such costs including batta for process-server, subsistence of the judgment-debtor and cost of conveyance, if any, and sums disbursed by the decree-holder under this proviso shall be deemed to be costs in this suit

(5A) During the temporary absence of the Judge who issued the warrant under rule 37 or 38, the warrant of committal may be signed by any other Judge of the same Court or by any Judicial Officer superior in rank who has jurisdiction over the same locality, or where the arrest is made on

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—*contd*

a warrant issued by the District Judge, the warrant of committal may be signed by any Subordinate Judge or District Munsif empowered in writing by the District Judge in this behalf

(6) No judgment-debtor shall be committed to the civil prison or brought before the Court from the prison to which he has been committed pending the consideration of any of the matters mentioned in sub-rule (2) unless and until the decree-holder pays into Court such sum as the Judge may think sufficient to meet the travelling and subsistence expenses of the judgment-debtor and the escort for the journey to and from the prison

Sub-rule (5) of rule 39 shall apply to such payments "

(R O C No 2191 of 1926—B1)

Rule 43

Substitute the following rules for rule 43 —

"43 (1) Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once, and

Provided also that, when the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the first proviso to this rule, he may at the instance of the judgment-debtor or of the decree-holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached—

(a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the Form No 15A

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

of Appendix E to this Schedule with one or more sufficient sureties for its production when called for, or

- (b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rule 55 or rule 57 or rule 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment

43A (1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the property seized

(2) If attached property is not sold under the first proviso to the rule 43 or retained in the village or place where it is attached under the second proviso to that rule, it shall be brought to the Court-house and delivered to the proper officer of the Court

43B (1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is so retained shall provide for its maintenance, and, if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house

Nothing in this rule shall prevent the judgment-debtor or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody

(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of property, if sold, or be paid by the person declared entitled

to

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

to delivery before he receives the same The Court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings ”

(Dis. No 168 of 1913)

Rule 45

Substitute the following for sub-rule (1) —

“(1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient, and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered, and the applicant shall deposit in Court within a date to be fixed by Court, such sum as the Court may deem sufficient to defray the cost of watching and tending the crop till such time ”

(G O Ms No 2084, Home, dated the 2nd September, 1936
—H C P Dis No 691 of 1936 dated the 13th October 1936)

Rule 48

Substitute a comma for the period at the end of sub-rule (1) of rule 48 and add the following words at the end of the sub-rule —

“such amount or instalment being calculated to the nearest anna, fractions of an anna of six pies and over being considered as one anna and omitting amounts less than six pies ”

(R O C No 1310 of 1926)

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

Rule 52

Add the following as proviso (u) and renumber the existing proviso as (i) —

“(u) Provided further that, where the Court whose attachment is determined to be prior receives or realizes such property, the receipt or realization shall be deemed to be on behalf of all the Courts in which there have been attachments of such property in execution of money decrees prior to the receipt of such assets

Explanation—Priority of attachment in the case of attachment of property in the custody of Court shall be determined on the same principles as in the case of attachment of property not in the custody of Court ”

(P Dis No 445/1935)

 Rule 53

Substitute the following for sub-rule (I) (b) (u) —

“(u) the holder of the decree sought to be executed or his judgment-debtor if he has obtained the consent in writing of the decree-holder or the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree ”

(G O Ms No 2084, Home, dated 2nd September, 1936—
H C P Dis No 691 of 1936, dated 13th October, 1936)

Add the following as sub-rule (I) (c) —

“(c) If the decree sought to be attached has been sent for execution to another Court, the Court which passed the decree shall send a copy of the said notice to the former Court, and thereupon the provisions of clause (b) shall apply in the same manner as if the former Court had passed the decree and the said notice had been sent to it by the Court which issued it ”

[G O No 87, Home (Judicial), dated the 11th January, 1918]

(Rules made by the High Court of Judicature at Madras,
under Section 122)

ORDER XXI—*contd**Rule 54*

Add the following as sub-rule (3) —

“(3) The order of attachment shall be deemed to have been made as against transferees without consideration from the judgment-debtor from the date of the order of attachment, and as against all other persons from the date on which they respectively had knowledge of the order of attachment, or the date on which the order was duly proclaimed under sub-rule (2) whichever is the earlier ”

(G O Ms No 2084, Home, dated the 2nd September, 1936
—H C P Dis No 691 of 1936, dated the 13th October,
1936)

Rule 57

Substitute the following for rule 57 —

“57 (1) Where any property has been attached in execution of a decree and the Court hearing the execution application either dismisses it or adjourns the proceedings to a future date, it shall state whether the attachment continues or ceases. Provided that when the Court dismisses such an application by reason of the decree-holder's default the order shall state that the attachment do cease

(2) Where the property attached is a decree of the nature mentioned in sub-rule (1) of rule 53, and the Court executing the attached decree dismisses the application for execution of the attached decree, it shall report to the Court which attached the decree the fact of such dismissal. Upon the receipt of such report the Court attaching the decree shall proceed under the provisions of sub-rule (1) and communicate its decision to the Court whose decree is attached ”

(G O Ms No 2084, Home, dated the 2nd September, 1936
—H C P Dis No 691 of 1936, dated the 13th October,
1936)

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

Rule 66

Re-number the existing clause (e) to sub-rule (2) as (f) and add the following as clause (e) —

“(e) the value of the property as stated (i) by the decree-holder and (ii) by the judgment-debtor ”

(G O Ms No 2084, Home, dated the 2nd September, 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 67

Add the following as sub-rule (4) —

“(4) Unless the Court so directs it shall not be necessary to send a copy of the proclamation to the judgment-debtor ”

(G O Ms No 2084, Home, dated the 2nd September 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 69

Substitute the following for sub-rule (2) —

“(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it ”

(G O Ms No 2084, Home, dated the 2nd September, 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 75

Substitute the following for the existing rule —

“75 (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, unless the Court decides to proceed under the provisions of sub-rule (2) hereunder, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale not be held until the crop has been cut or gathered and is ready for storing

(2) Where

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

(2) Where the crop from its nature does not admit of being stored, or can be sold to greater advantage in an unripe state, it may be sold before it is cut and gathered or in such unripe state, and the purchaser shall be entitled to enter on the land, and do all that is necessary for the purpose of tending and cutting or gathering it "

(G O Ms No 2064, Home, dated the 2nd September, 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 85

Substitute the following for the existing rule —

"The full amount of purchase money payable and the amount required for the general stamp for the certificate under rule 94 shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property

Time for payment in full of purchase money and value of stamp for certificate of sale

Provided that in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72 "

Rule 87

Substitute the following for the existing rule —

"Every re-sale of immovable property, in default of the payment of the amounts mentioned in rule 85 within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale "

Notification on resale

(G, O Ms No 2922, Home, dated the 28th October, 1936)
(P Dis No 690 of 1936)

Rule 89

Substitute the following for sub-rule (1) —

"(1) Where immovable property has been sold in execution of a decree, the judgment-debtor, or any person deriving title

from

518

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—contd

from the judgment-debtor, or any person holding an interest in the property may apply to have the sale set aside on his depositing in Court—

- (a) for payment to the purchaser, a sum equal to 5 per cent of the purchase money, and
- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of that proclamation of sale, have been received by the decree-holder.

Provided that where the immovable property sold is liable to discharge a portion of the decree debt the payment under clause (b) of this sub-rule need not exceed such amount as under the decree the owner of the property sold is liable to pay”

(G O Ms No 2084, Home, dated the 2nd September 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)

Rule 89

At the end of sub-rule (1) insert the following proviso —

“Provided that where the immovable property sold is liable to discharge only a portion of the decree-debt, the payment under clause (b) of this sub-rule need not exceed such amount as under the decree the owner of the property sold is liable to pay”

(P Dis No 56 of 1927)

Rule 90

Substitute the following for the existing rule —

“(90) Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale, may apply to the Court to set the sale aside on the ground of a material irregularity or fraud in publishing or conducting it

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXI—*concl'd*

Provided that the Court may, before admitting the application, call upon the applicant either to furnish security to the satisfaction of the Court for an amount equal to that mentioned in the sale warrant or that realized by the sale, whichever is less, or to deposit such amount in Court

Provided also that the security furnished or the deposit made as aforesaid, shall be liable to be proceeded against only to the extent of the deficit on a re-sale of the property already brought to sale

Provided further that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud "

*(G O Ms No 2084, Home, dated the 2nd September, 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)*

Rule 92

In sub-rule (2) after the words "within thirty days from the date of sale" insert the following words —

"and in case where the amount deposited has been diminished owing to any cause not within the control of the depositor such deficiency has been made good within such time as may be fixed by the Court "

(P Dis No 56 of 1927)

Rule 99

Substitute the following for the existing rule —

"99 Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than those mentioned in rule 98) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment debtor, the Court shall make an order dismissing the application "

*(G O Ms No 2084, Home, dated the 2nd September 1936—
H C P Dis No 691 of 1936, dated the 13th October, 1936)*

ORDER XXII

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXII

Rule 4

(1) Remove the period at the end of sub-rule (3) and add the following —

“except as hereinafter provided”

(2) Insert the following as new sub-rule (4) —

“(4) The Court, whenever it sees fit, may exempt the plaintiff from the necessity to substitute the Legal Representative of any such defendant who has been declared *ex parte* or who has failed to file his written statement or who having filed it, has failed to appear and contest at the hearing, and the judgment may in such case be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place ”

(P Dis No 4 of 1927)

 Rule 5

Add the following as a proviso —

“Provided that an Appellate Court before determining it may direct any lower Court to take evidence thereon and to return the evidence so taken together with its finding and reasons and may take such finding and reasons into consideration in determining the question ”

(Dis No 387 of 1919)

 Rule 11A (new)

Add the following as rule 11A —

“11A The entry on the record of the name of the representative of deceased appellant or respondent in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the King in Council, shall be deemed to be a *quasi-judicial* act within the meaning of section 128 (2) (i) of the Code of Civil Procedure and may be performed by the Registrar, provided that contested applications and applications presented out of time shall be posted before a Judge for disposal ”

(Dis No 1601 of 1914)

ORDER XXV

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXV

Rule 1

The following shall be inserted as sub-rule (4) —

“(4) In all cases in which an element of champerty or maintenance is proved, the Court may on the application of the defendant demand security for the estimated amount of the defendant's costs, or such proportion thereof, as from time to time during the progress of the suit the Court may think just ”

(R O C No 3019 of 1926)

ORDER XXVIA (new)

Read the following Order as XXVIA —

“1 The Court may in any suit issue a commission to such persons as it thinks fit to translate accounts and other documents which are not in the language of the Court

2 The report of the Commissioner shall be evidence in the suit and shall form part of the record

3 Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expense of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued ”

(Dis No 1685 of 1914)

ORDER XXVII

Rule 5

Substitute the following for rule 5 —

“5 The Court in fixing the day for the Secretary of State for India in Council to answer the plaint shall allow not less than three months' time from the date of summons for the necessary communication with the Government through the proper channel and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government and may extend the time at its discretion ”

(Dis No 644 of 1911)

ORDER XXIX

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXIX

Rule 1A (new)

Insert the following as rule 1A —

“1A In suits against a Local Authority the Court in fixing the day for the defendant to appear and answer shall allow not less than two months’ time between the date of summons and the date for appearance ”

(Dis No 644 of 1911)

ORDER XXXII

Delete rules 3 and 4 and substitute in lieu thereof the new rule 3 set forth below —

Qualifications to be a next friend or guardian

“3 (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit

Provided that the interest of that person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant or, in the case of a guardian for the suit, a plaintiff

Appointed or declared guardians to be preferred and to be superseded only for reasons recorded

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than the guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor’s welfare that another person be permitted to act or be appointed as the case may be

Guardians to be appointed by Court

(3) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for the minor

Appointment to be on application and where necessary after notice to proposed guardian

(4) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff The application, where it is by the plaintiff, shall set forth, in the order of their suitability, a list of persons (with their full addresses for service of notice in Form No 11A set forth in Appendix H hereto) who are competent and qualified to act as guardian

for

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXXII—contd

for the suit for the minor defendant The Court may for reasons to be recorded, in any particular case, exempt the applicant from furnishing the list referred to above

(5) The application referred to in the above sub-rule whether made by the plaintiff or on behalf of the minor defendant shall be supported by an affidavit verifying the fact that the proposed guardian has not or that no one of the proposed guardians has any interest in the matters in controversy in the suit adverse to that of the minor and that the proposed guardian or guardians are fit persons to be so appointed The affidavit shall further state according to the circumstances of each case (a) particulars of any existing guardian appointed or declared by competent authority, (b) the name and address of the person, if any, who is the *de facto* guardian of the minor, (c) the names and addresses of persons, if any, who in the event of either the natural or the *de facto* guardian or the guardian appointed or declared by competent authority, not being permitted to act, are by reason of relationship or interest or otherwise, suitable persons to act as guardian for the minor for the suit

Contents of affidavit in support of the application for appointment of guardian.

(6) An application for the appointment of a guardian to the suit of a minor shall not be combined with an application for bringing on record the legal representatives of a deceased plaintiff or defendant The applications shall be by separate petitions

Application for appointment of guardian to be separate from application for bringing on record the legal representatives of a deceased party

(7) No order shall be made on any application under sub-rule (4) above except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf or where there is no guardian, upon notice to the father or other natural guardian of the minor, or where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule The notice required by this sub-rule shall be served six clear days before the day named in the notice for the hearing of the application and may be in Form No 11 set forth in Appendix H hereto

Notice of application to be given to persons interested in the minor defendant other than the proposed guardian.

(8) Where

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXXII—contd

Special provision to shorten delay in getting a guardian appointed

(8) Where the application is by the plaintiff, he shall, along with his application and affidavit referred to in sub-rules (4) and (5) above, produce the necessary forms in duplicate, filled in to the extent that is possible at that stage, for the issue simultaneously of notices to two at least of the proposed guardians for the suit to be selected by the Court from the list referred to in sub-rule (4) above, together with a duly stamped voucher indicating that the fees prescribed for service have been paid

If one or more of the proposed guardians signify his or their consent to act, the Court shall appoint one of them and intimate the fact of such appointment to the person appointed by registered post. If no one of the persons served signifies his consent to act, the Court shall proceed to serve simultaneously another selected two, if so many there be, of the persons named in the list referred to in sub-rule (4) above, but no fresh application under sub-rule (4) shall be deemed necessary. The applicant shall, within three days of intimation of unwillingness by the first set of proposed guardians, pay the prescribed fee for service and produce the necessary forms duly filled in.

No person shall be appointed guardian without his consent

(9) No person shall, without his consent, be appointed guardian for the suit. Whenever an application is made proposing the name of a person as guardian for the suit, a notice in Form No 11A set forth in Appendix II hereto shall be served on the proposed guardian, unless the applicant himself be the proposed guardian or the proposed guardian consents.

Court guardian—when to be appointed—how he is to be placed in funds

(10) Where the Court finds no person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader of the Court to be the guardian and may direct that the costs to be incurred by that officer in the performance of his duties as guardian shall be borne either by the parties or by any one or more of the parties to the suit or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of the costs as justice and the circumstances of the case may require.

(11) When

(Rules made by the High Court of Judicature at Madras
under Section 122)

ORDER XXXII—contd

(11) When a guardian for the suit of a minor defendant is appointed and it is made to appear to the Court that the guardian is not in possession of any or sufficient funds for the conduct of the suit on behalf of the defendant and that the defendant will be prejudiced in his defence thereby, the Court may, from time to time, order the plaintiff to advance monies to the guardian for purpose of his defence and all monies so advanced shall form part of the costs of the plaintiff in the suit. The order shall direct that the guardian, as and when directed, shall file in Court an account of the monies so received by him "

Funds for a
guardian
other than
Court guardian
to defend

Rule 3

In the new sub-rule (5) added by the Civil Procedure Code Third Amendment Act XVI of 1937, to rule (3) as it originally stood in the enactment of 1908—

(i) for the words "sub-rule (1)," substitute the words "sub rule (3) "

(ii) number the new sub-rule as (3) (a)

(Madras High Court Notification, dated the 6th September, 1938)

Rule 6

Add the following proviso to sub-rule (2) —

"Provided that the Court may, in its discretion, dispense with such security in cases where the next friend or guardian for the suit is the manager of a joint Hindu family or the karnavan of a Malabar tarwad and the decree is passed in favour of the joint family or the tarwad "

(R. O. C. No 4806 B-1 of 1930)

Rule 7

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXXII—contd

Rule 7

Insert the following as sub-rule (1A) —

Rule —“(1A) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other action on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file in Court with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under disability. A decree or order for the compromise of a suit, appeal or matter to which a minor or other person under disability is a party shall recite the sanction of the Court thereto and shall set out the terms of the compromise as in Form No 24 in Appendix D to this schedule ”

(Dis No 1647 of 1910)

Rule 11A

Add the following as rule 11A —

“11A The appointment or discharge of a next friend or guardian for the suit of a minor in a matter pending before the High Court in its appellate jurisdiction, except in cases under appeal to the King in Council, shall be deemed to be a quasi-judicial act within the meaning of section 128 (2) (i) of the Code of Civil Procedure and may be performed by the Registrar, provided that contested applications and applications represented out of time shall be posted before a Judge for disposal ”

(Dis No 1601 of 1914)

Rule 17

Add the following as rule 17 —

“17 In suits relating to the person or property of a minor or other person under the superintendence of the Court of
Wards.

* This rule and form 24 supersede rule No 119 and Form No 35 of the Civil Rules of Practice, 1905, and rule No 33A of the Rules of the High Court, Madras, Appellate Side

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XXXII—*concl'd*

Wards the Court in fixing the day for the defendant to appear and answer shall allow not less than two months' time between the date of summons and the date for appearance "

(Dis No 644 of 1911)

ORDER XXXIV

Rule 5

Substitute the following for Rule 5 (3) —

"Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf *and after notice to all the parties*, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of Rule 4

(R O C No 4955 of 1930—B—1) °

ORDER XXXVII

Rule 1

Insert the following as clause (b) —

"(b) The Madras City Civil Court"

ORDER XL

Rule 4

1 Substitute the following for rule 4 —

"(1) If a receiver fails to submit his accounts at such periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered

(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his
accounts

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XL—contd

accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post to the surety, if any, for the receiver, but the cost of his appearance shall be borne by the surety himself unless the Court otherwise directs.

Provided that the Court may, where the account is disputed by the parties and is of a complicated nature or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the receiver refer the parties to a suit. In all such cases the Court shall state in writing its reasons for the reference.

(3) If the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) of this rule, within the period fixed in the order, the Court may direct such amount to be recovered either from the security (if any) furnished by him under rule 3, or by attachment and sale of his property, or, if his property has been attached under sub-rule (1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him and shall pay the balance (if any) of the sale proceeds to the receiver."

(P Dis No 60 of 1933)

Rule 6

Add as rule 6 —

"6 Where the property belongs to a co-operative society registered under the Madras Co-operative Societies Act or to a member of such co-operative society, and the Court considers that the interests of those concerned will be promoted by the management of an officer of the Co-operative department, the Court may, with the consent of the officer, appoint him to be receiver of such property."

ORDER XLI.

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLI .

Rule 1

(1) Add the following sentence to sub-rule (1) of rule 1 —

“The copy of the judgment shall be a printed copy in every case in which the High Court has prescribed that the judgment shall be printed when a copy is applied for for the purpose of appeal ”

[G O No 933, Home (Judicial), dated the 3rd May, 1917]

(2) Add the following as a proviso to sub-rule (1) of rule 1 —

“Provided that, in appeals from decrees or orders under any special or local Act to which the provisions of Parts II and III of the Limitation Act, IX of 1908, do not apply and in which certified copies of such decrees or orders have not been granted within the time prescribed for preferring an appeal, the Appellate Court may admit the memorandum of appeal subject to the production of the copy of the decree or order appealed from within such time as may be fixed by the Court ”

(Dis No 2135 of 1918)

(3) Add the following sentence to sub-rule (2) of rule 1 —

“The memorandum shall also contain a statement of the valuation of the appeal for the purposes of the Court-fees Act ”

(Dis No 2057 of 1917)

(4) Add the following as a new sub-rule (3) to rule 1 —

“(3) When an appeal is presented after the period of limitation prescribed therefor, it shall be accompanied by a petition supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period, and the Court shall not proceed to deal with the appeal in any way (otherwise than by dismissing it either under rule 11 of this Order or on the ground that it is not satisfied as to the sufficiency of the reasons for extending the period of limitation) until notice has been given to the respondent and his objections, if any, to the Court acting under the provisions of section 5 of Act IX of 1908 have been heard ”

[G O No 191, Home (Judicial) dated the 27th January, 1921]

Rule 5

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLI—contd

Rule 5

Substitute the following for the existing sub rule (1) —

‘ 5 (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reasons only of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause order stay of execution of such decree and may, when the appeal is against a preliminary decree, stay the making of a final decree in pursuance of the preliminary decree or the execution of any such final decree, if already made ’

(P Dis No 161 of 1932)

Rule 9

In rule 9, delete sub-rule (2) and substitute the following in lieu thereof —

“Such book shall be called the Register of Appeals ”
[G O No 2606, Law (General), dated the 6th August, 1929]

Rule 14

Insert the following as a proviso to sub-rule (1) —

“Provided that the Appellate Court may dispense with service of notice on respondents against whom the suit has proceeded *ex parte* in the Court from whose decree the appeal is preferred ”

(P Dis No 4 of 1927)

Rule 18

In rule 18 after the words “cost of serving the notice” insert the words “or if the notice is returned unserved, to deposit within any subsequent period fixed the sum required to defray the cost of any further attempt to serve the notice ”

(Dis No 1333 of 1913)

(Rules made by the High Court of Judicature at Madras
under Section 122)

ORDER XLI—contd

Rule 19

Re-number rule 19 as rule 19 (1) and insert the following as sub-rule (2) —

“(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1) ”

(D: No 612 of 1926)

Rule 23

Substitute the following for Rule 23 —

“23 Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit, and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand ”

(R O C No 5105 of 1930 B-1)

Rule 31

Substitute the following for rule 31 —

“31 The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination,
- (b) the decision thereon,
- (c) the reasons for the decision, and

(d) where

(Rules made by the High Court of Judicature at Madras under Section 122.)

ORDER XLI—concl'd

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall bear the date on which it is pronounced and shall be signed by the Judge or the Judges concurring therein, provided that, where the presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge "

[G O No 1852, Home (Judicial), dated the 4th September, 1917]

 Rule 35

Substitute the following for sub-rule (2) of Rule 35 —

"(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, their addresses for service and a clear specification of the relief granted or other adjudication made "

(B O C No 3299 B-1/ 1930)

 ORDER XLIA (new)

After Order XLI, insert the following as Order XLIA —

"ORDER XLIA

Appeals to the High Court from original decrees of Subordinate Courts

1 The rules contained in Order XLI shall apply to appeals in the High Court of Judicature at Madras with the modifications contained in this Order

2 (1) The

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLIA—*contd*

2 (1) The memorandum of appeal shall be accompanied by twelve printed copies of the judgment, one of such copies being a certified copy, the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the rules of Court

(2) Notwithstanding anything contained in rule 22 of Order XLI the period prescribed for entry of appearance by the respondent and filing by him of Memorandum of Cross Objections, if any, shall, unless otherwise ordered, be thirty days from the service of notice upon him

3 (1) If the respondent intends to appear and defend the appeal he shall within the period specified in the notice of appeal enter an appearance by filing in Court a memorandum of appearance

(2) If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record

Provided that a respondent may apply by petition for further time, and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicant's default, and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application

4 (1) The memorandum of appeal and the memorandum of appearance shall state an address for service within the City of Madras at which service of any notice, order or process may be made on the party filing such memorandum

(2) If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred

Provided that if such party subsequently appears by a pleader he shall state in the vakalat an address for service within the City of Madras, and shall give notice thereof to each party who has appeared

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLIA—contd

(3) If a party appears by a pleader, his address for service shall be that of his pleader, and all notices to the party shall be served on his pleader at that address

5 The Court may direct that service of a notice of appeal or other notice or process shall be made by sending the same in a registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served which has been filed by him in the lower Court Provided that, after a party has given notice of an address for service in accordance with rule 4, service of any notice or process shall be made at such address

6 All notices and process, other than a notice of appeal, shall be sufficiently served if left by a party or his pleader, or by a person employed by the pleader, or by an officer of the Court, between the hours of 11 A M and 5 P M at the address for service of the party to be served

7 Notices which may be served by a party or his pleader under rule 6, or which are sent from the office of the Registrar, may, unless the Court otherwise directs, be sent by registered post, and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof and the posting thereof shall be a sufficient service

8 If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately

9 A list of all cases in which notice is to be issued to the respondent shall be affixed to the Court notice board after the case has been registered

10 (1) If upon a case being called on for hearing by the Court, it appears that the record has not been translated and printed in accordance with the rules of Court, the Court may hear the appeal or dismiss it, or may adjourn the hearing and direct the party in default to pay costs, or may make such order as it thinks fit

(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLIA—concl'd

11 When costs are awarded, unless the Court otherwise orders, the costs of a party appearing upon any application before the Registrar or the Court shall be Rs 15, and the costs of appearing when the appeal is in the daily cause list for final hearing and is adjourned shall be Rs 30. At the request of any party, the Registrar shall cause the order to be drawn up and the said costs to be inserted therein.

Memorandum of Objections

12 (1) If the acknowledgment mentioned in rule 22 (3) of Order XLI is not filed, the respondent shall together with the memorandum of objections file so many copies thereof as there are parties affected thereby.

(2) The prescribed fees for service shall be presented together with the memorandum to the Registrar.

13 If any party or the pleader of any party to whom a memorandum of objections has been tendered has refused or neglected for three days from the date of tender to give the acknowledgment mentioned in rule 22 (3) of Order XLI, the respondent may file an affidavit stating the facts and the Registrar may dispense with service of the copies mentioned in rule 12 (1).

14 Rule 31 of Order XLI shall not apply to the High Court. If judgment is given orally a shorthand note thereof shall be taken by an officer of the Court and a transcript made by him shall be signed or initialled by the Judge or by the Judges concurring therein after making such corrections as may be considered necessary."

[G O No 2128, Home (Judicial), dated the 18th October, 1917]

ORDER XLIB (new)

Insert the following as Order XLIB —

"ORDER XLIB

1 The rules of Order XLIA shall apply, so far as may be, to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court

Provided

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLIB—*contd*

Provided that it shall not be necessary to file copies of the judgment and decree appealed from

2 Notice of the appeal shall be given in manner prescribed by Order XLIA, rule 6, or if the party to be served has appeared in person, in manner prescribed by rule 5 of the said Order "

[G O No 2128, Home (Judicial), dated the 18th October, 1917]

ORDER XLII

Substitute the following for the existing Order XLII —

' ORDER XLII

Appeals from appellate decrees

1 The rules of Order XLI and Order XLIA shall apply, so far as may be, to appeals to the High Court of Judicature at Madras from appellate decrees with the modifications contained in this Order

Provided that in appeals from appellate decrees the memorandum of appeal shall be accompanied by a copy of the decree appealed from and four printed copies of the judgment on which it is founded, one of them being a certified copy, and also four printed copies of the judgment of the Court of first instance, one of them being a certified copy

2 (1) The memorandum of appeal shall be printed or type-written and shall be accompanied by the following papers —

One certified copy of the decrees of Court of first instance and of the Appellate Court, and four printed copies of each of the judgments of the said Courts, one copy of each judgment being a certified copy

(2) If any ground of appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with the memorandum of appeal

Provided that if such document is not in the English language and the appellant appears by a pleader, an English

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLII—contd

translation of the document certified by the pleader to be a correct translation shall be presented

(3) If the appellant fails to comply with this rule, the appeal may be dismissed "

[G O No 2128, Home (Judicial), dated the 18th October, 1917]

ORDER XLIII

Rule 1

(a) Substitute the following for rule 1 (d) —

"(d) An order under rule 13 or rule 15 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree or order passed *ex parte* "

(Madras High Court Notification, dated the 6th March, 1933)

(b) Substitute the following for sub-rule (s) —

"(s) An order under rule 1 or 4 of Order XL, except an order under the proviso to sub-rule (2) of rule 4 "

(P Dis No 60 of 1933)

Rule 2

Substitute the following for rule 2 —

"2 The rules of Order XLI and of Order XLIA shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any civil Court from which an appeal to the High Court is allowed under any provision of law

Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court "

Rule 3

(Rules made by the High Court of Judicature at Madras under Section 122)

ORDER XLIII—contd

Rule 3

Substitute the following for rule 3 —

3 (1) The provisions of Order XLII shall apply, so far as
 Appeals from may be, to Appeals from Appellate Orders
 Appellate Orders

(2) A memorandum of appeal from an appellate order shall be accompanied by a certified copy of the judgment and of the order of the Court of first instance, and by a certified copy of the judgment and of the order of the Appellate Court

(3) If any ground of appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with the memorandum of appeal

Provided that, if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader to be a correct translation shall be presented "

(P Dis No 783 of 1932)

ORDER XLV

Rule 7

Re-number the present sub-rule (2) as sub-rule (3) and insert the following as sub-rule (2) —

"No such security as is mentioned in rule 7 (1), clause (a), shall be required from the Secretary of State for India in Council or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act purporting to be done by him in his official capacity "

(Madras High Court Notification, dated the 27th February, 1936)

ORDER XLVII

Rule 7

In sub-rule (1) substitute the word "order" for the word "application" occurring after the words "on the ground that the"

(P Dis No 131 of 1929)

OF 1908]

Civil Procedure

*(Rules made by the High Court of Judicature at Madras
under Section 122)*

APPENDIX B

Form No 1

Insert the following "Note" in Form No 1, namely —

"NOTE—Also take notice that in default of your filing an address for service before the day before mentioned you are liable to have your defence struck out"

[*Dis No 369 (e) of 1916*]

Form No 1A (new)

After Form No 1, insert the following as Form No 1A —

"No 1A

SUMMONS FOR ASCERTAINING WHETHER A SUIT IS CONTESTED OR
NOT, AND IF NOT CONTESTED FOR ITS IMMEDIATE DISPOSAL

(O V, 1r 1, 5)

(*Title*)

To

Name, description and place of residence

Whereas _____ has instituted a suit against
you for _____ you are hereby summoned to appear
in this Court in person or by a pleader duly instructed, and
able to answer all material questions relating to the suit (or
who shall be accompanied by some person able to answer all
such questions) on the _____ day of _____ 19____ at
_____ o'clock in the _____ noon and to state
whether you contest or do not contest the claim and, if you
contest, to receive directions of Court as to the date on which
you have to file the written statement, the date of trial and
other matters

Take notice that in the event of the claim not being con-
tested the suit shall be decided at once

Take

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX B—contd

Take further notice that in default of your appearance on the day and hour before mentioned, the suit will be heard and determined in your absence

Given under my hand and the seal of the Court, this day of 19

Judge

Notice —If you admit the claim you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property or both "

(P Dis No 7 of 1927)

Form No 12A (new)

After Form No 12, insert the following as Form No 12A —

"No 12A

NOTICE TO THE PROPOSED GUARDIAN OF A MINOR DEFENDANT. RESPONDENT (O XXXII, rr 3 and 4) (Title)

To

(Name, description and place of residence of proposed guardian)

Take notice that X plaintiff appellant in has presented a petition to the Court praying that you be appointed guardian ad litem to the minor defendant(s) respondent(s), and that the same will be heard on the 19 day of

2 The affidavit of X has been filed in support of this application

3 If you are willing to act as guardian for the said defendant(s) respondent(s) you are required to sign (or affix your mark to) the declaration on the back of this notice

4 In the event of your failure to signify your express consent in manner indicated above, take further notice that

of 1908]

Civil Procedure

*(Rules made by the High Court of Judicature at Madras
under Section 122)*

APPENDIX B—*contd*

the Court may proceed under O XXXII, r 4, Code of Civil Procedure, to appoint some other suitable person or one of its officers as guardian *ad litem* of the minor ^{defendant (s)} _{respondent (s)} aforesaid

Dated the _____ day of _____ 19 .

(Signed)

(To be printed on the reverse)

I hereby acknowledge receipt of a duplicate of this notice and consent to act as guardian of the minor ^{defendant (s)} _{respondent (s)} therein mentioned

(Signed) Y Z

Witnesses

1

2 "

[G O No 1997, Law (General), dated the 24th November,
1921]

Form No 13

Add the following to note (1) —

“If the document you are summoned to produce is an entry in a letter-book, or a shop-book or other account in current use, and you are desirous of receiving back the document, you may furnish along with the document a copy of the entry ”

(P Dis No 669 of 1938)

Form No 13A (new)

*After Form No 13, insert the following as Form No.
13A —*

“No 13A

CERTIFICATE OF ATTENDANCE TO AN OFFICER OF GOVERNMENT
SUMMONED AS A WITNESS IN A SUIT TO WHICH THE GOVERN-
MENT IS A PARTY

Order XVI,

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX B—concl'd

Order XVI, Rule 4-A

(Cause Title)

This is to certify that (name) (designation) being a Government servant from the Province of (name) was summoned to give evidence in his official capacity on behalf of the plaintiff/defendant in the above suit/matter and was in attendance in this Court from the day of to the day of 193 , (inclusive) and that sum of Rs has been paid into Court by the plaintiff/defendant towards his travelling and subsistence allowance for days according to the scale prescribed by the Government of the Province of (name) and that the said amount has been/ will be remitted to the Government treasury at to be credited to Government under the head "XVI A—Miscellaneous Fees and Fines"

Dated the day of 193

Presiding Judge or Chief
Ministerial Officer

(P Dis No 22 of 1932)

APPENDIX D

Forms Nos 10A and 10B (new)

Insert the following as Forms Nos 10A and 10B*—

"No 10A

†FINAL DECREE FOR SALE

[O 34, r 5 (2), or O 34, r 8 (4)]

(Title)

Upon reading the preliminary decree passed in the above suit and the application of the plaintiff , dated appellant and

* The forms relating to mortgage decrees in Appendix D to Schedule I have been superseded in whole by the provisions of s 8 and Sch of Act 21 of 1929, *supra* pp 341—375

† NOTES—(1) In the case of a decree under Order 34, rule 5 (2), score out the words "plaintiff" and "defendant" below the lines and in the case of a decree under Order 34, rule 8 (4), score out the same words occurring above the lines

(2) Direction No (2) should be struck out if the personal liability has not been adjudicated in the suit or has been declared not to exist

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX D—contd

and upon hearing Mr _____ for plaintiff and
 Mr. _____ for defendant and it appearing
 that the payment directed by the said decree has not been
 made

It is hereby decreed as follows

(1) that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after defraying thereout the expenses of the sale) be applied in payment of what is declared due to $\frac{\text{plaintiff}}{\text{defendant}}$ in the aforesaid preliminary decree together with subsequent interest and subsequent costs and that the balance, if any, be paid to the $\frac{\text{defendant}}{\text{plaintiff}}$ or other person entitled to receive it, (2) that if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full the $\frac{\text{plaintiff}}{\text{defendant}}$ be at liberty to apply for a personal decree for the amount of the balance; and (3) that the $\frac{\text{defendant}}{\text{plaintiff}}$ do also pay $\frac{\text{plaintiff}}{\text{defendant}}$ Rs _____ for the cost of this application

[Here enter description of mortgaged property in English or in the language of the Court]

(Dis No 583 of 1915)

No 10B

*FINAL DECREE FOR REDEMPTION

[O 34, r 3 (1), O 34, r 5 (1), and O 34, r 8 (1)]
 (Title)

Upon

* NOTES—(1) In the case of a decree under Order 34, rule 8 (1), score out the words "plaintiff" and "defendant" above the lines, in the case of decrees under Order 34, rule 3 (1) and rule 5 (1), score out the words "plaintiff" and "defendant" below the lines

(2) The words "or by those under whom he claims" will be inserted only if the mortgagee derives title from an original mortgagee

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX D —contd

Upon reading the preliminary decree in the above suit on and the application of the plaintiff I A No defendant dated ' and after hearing Mr pleader for the and Mr pleader for the and it appearing that the payment directed by the aforesaid decree has been made

It is hereby decreed as follows —

That the plaintiff do deliver up to the defendant or to such defendant plaintiff person as he appoints all documents in his possession or power relating to the mortgaged property and do also re-transfer the property to the defendant free from the mortgage and from all plaintiff incumbrances credited by the plaintiff or any person claiming defendant under him (or by those under whom he claims) and do also put the defendant in possession of the property plaintiff

SCHEDULE

Description of the mortgaged property

| | | |
|------------------|------------------|----------------------|
| The costs of the | <u>defendant</u> | in this proceeding — |
| Particulars | <u>plaintiff</u> | Amount " |

(Dis No 583 of 1915)

Form No 24

Add the following form as Form No 24, viz —

"No 24

DECREE SANCTIONING A COMPROMISE OF A SUIT ON BEHALF OF A MINOR OR LUNATIC

(Title)

This suit coming on this day for final disposal in the presence of etc, and C D, the defendant, a minor by E F, his guardian *ad litem*, applying that this suit may be compromised in the terms of an agreement in writing dated the day of and made between A B, the plaintiff, of the one part, and the said C D by the said guardian *ad litem* of the other part, (or, on the terms hereafter set forth) and, it appearing to this Court that the said compromise is fit and proper and for the benefit of the said minor,

this

(Rules made by the High Court of Judicature at Madras under Section 123)

APPENDIX D—concl'd

this Court doth sanction the said compromise on behalf of the said minor, and with the consent of all parties hereto It is ordered as follows —

(Set out the terms of the compromise)”

(Dis No 1647 of 1910)

APPENDIX E

Form No 8

Between the words “command you to attach” and the words “the moveable property of the said” add the words “on or before the day of 19 ”

Form No 13

In Form No 13, between the words “the costs of executing this process”, and the words “to bring this defendant”, add the words “or unless satisfaction of the decree be endorsed by the decree-holder on the warrant in the manner provided in Order XXI, rule 25 (2)”

Form No 14-A (new)

Insert the following as Form 14-A —

“Order of entrustment of judgment-debtor to the custody of an officer of Court
[Order XXI, rule 40, sub-rule (2) and the proviso to sub-rule (3), Civil Procedure Code]

IN THE COURT OF THE OF

To

The Bailiff of the Court,

“WHEREAS who has been brought before this Court, this day of 193 , under warrant in execution of a decree which was made and pronounced by the said Court on the day of 193 , and

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX E—contd

thereof, then this obligation shall be void otherwise it shall remain in full force

I J

K L

M N

Signed and delivered by the above bounden _____ in the presence of _____

(Dis No 166 of 1913)

Form No 29

Add the following as a "Note" to Form No 29—(Proclamation of Sale) —

"NOTE—The title deeds relating to the property have not been filed in Court, and the purchaser will take the property subject to the risk of there being mortgages by deposit of title deeds, or mortgages not disclosed in the encumbrance certificate"

(Dis No 2134 of 1918)

Form No 39

Substitute the following for Form No 39 —

"No 39

Order for delivery to certified purchaser of land at a sale in execution (Order 21, rule 95)

(Title)

To

The Bailiff of the Court

WHEREAS _____ has become the certified purchaser of _____ at a sale in execution of decree in suit No _____ of 19 _____, you are hereby ordered to put the said _____, the certified purchaser, as aforesaid, in possession of the same, and you are hereby further required to state in your return whether there are crops on the land and whether you have delivered them to _____, the certified purchaser

Given

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX E—concl'd

Given under my hand and the seal of the Court, this
day of 19

Judge "

(P Dis No 607 of 1931)

APPENDIX F

Substitute the following for Form No 9 —

“No 9

APPOINTMENT OF A RECEIVER,

(O 40, r 1)

(Title)

WHEREAS it appears to the Court that in the above suit it is just and convenient to appoint a receiver of the properties specified below (or whereas the properties specified below have been attached in execution of a decree passed in the above suit on the day of 19, in favour of)

It is hereby ordered that A B be appointed (subject to his giving security to the satisfaction of the Court) the receiver of the said property and of the rents, issues and profits thereof under Order XL of the Code of Civil Procedure, 1908, with all powers under the provisions of that Order, except that he shall not without leave of the Court (1) grant leases for a term exceeding three years or (2) institute suits in any Court (except suits for rent) or (3) institute appeals in any Court (except from a decree in a rent suit) where the value of the appeal is over Rs 1,000 or (4) expend on the repairs of any property in any period of two years more than half of the net annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would be let when in a fair state of repair, provided that such amount shall not exceed Rs 1,000

And it is further ordered that the ^{parties} _{defendants} to the above suit and all persons claiming under them do deliver up quiet possession of the properties, moveable and immoveable, specified below together with all leases, agreements for lease,

kabuleats

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX F—contd

kabuleats, account books, papers, memoranda and writings relating thereto to the said receiver. And it is further ordered that the said receiver do take possession of the said property moveable and immoveable, and collect the rents, issues and profits of the said immoveable property and that the tenants and occupiers do attorn and pay their rents in arrear and growing rents to the said receiver. And it is further ordered that the said receiver shall have power to bring and defend suits in his own name and shall also have power to use the names of the plaintiffs and defendants where necessary. And it is further ordered that the receipt or receipts of the said receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such receiver.

And it is further ordered that the said receiver do out of the first moneys to be received by him pay the debts due from the said _____ and shall be entitled to retain in his hands the sums of Rs _____ for current expenses, but subject thereto shall pay his net receipts as soon as the same come to his hands, into Court to the credit of this suit. He shall once in every _____ months file his accounts and vouchers in Court, the first account to be filed on the _____ day of _____ and to be passed on the _____ day of _____. He shall be entitled to commission at the rate of Rs _____ per cent on the net amounts collected by him or to the sum of Rs _____ per month (or as the case may be) as his remuneration (or he shall act without any remuneration).

And it is further ordered (where an additional office establishment is required) that the said receiver shall be allowed to charge to the estate in addition to his own office establishment the following further establishment —

(Here enter specification of property)

Given under my hand and the seal of the Court, this
day of _____ 19 _____

(Dis No 643 of 1914)

(Rules made by the High Court of Judicature at Madras
under Section 122)

APPENDIX G

Form No 6

Insert the following "Note," namely —

"NOTE —Also take notice that if an address for service is not filed before the aforesaid date, this appeal is liable to be heard and decided as if you had not made an appearance"

[Dis No 369 (e) of 1916]

Forms Nos 6A and 6B (New)

Insert the following as Forms Nos 6A and 6B —

"No 6A

NOTICE TO RESPONDENT

(O XLIA, r 2)

(Cause title)

Appeal from the _____ of the Court
of _____ dated the _____ day
of _____
To _____

Respondent

Take notice that an appeal from the above decree (*order*) has been presented by the above-named appellants and registered in this Court, and that if you intend to defend the same you must enter an appearance in this Court and give notice thereof to the appellant or his pleader within 30 days after service of this notice on you

If no appearance is entered on your behalf by yourself, your pleader or some one by law authorized to act for you in this appeal, it will be heard and decided in your absence

The address for service of the appellant is that of his pleader Mr A B of (*insert address*) Madras
(*If the appellant appears in person, insert his address for service*)

Given under my hand and the seal of the Court, this
day of _____ 19 _____

Registrar

[Interlocutory application No _____ of 19 _____ has been made by appellant, and execution has been stayed (*or other order made*) by order dated the _____ day of _____ 19 _____]

No 6B

547

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX G—contd

“No 6B

MEMORANDUM OF APPEARANCE

(O XLIA, r 3)

(Cause title)

Take notice that the respondent intends to appear and defend the above appeal, and that his address for service of all notices and process is (insert address)

The said respondent requires a list of the papers which the appellant proposes to translate and print

Dated the _____ day of _____ 19 _____

(Signed) C D ,

Vakil for Respondent

To the Registrar, High Court of Judicature, Madras' [G O No 2128, Home (Judicial), dated the 18th October, 1917]

Form No 9

Substitute the following for Form No 9 —

DECREE ORDER

IN THE COURT OF THE Present —

day, the _____ day of _____ Judge 19 .
Between Civil Miscellaneous Appeal Suit } No of 19 .
Appeal Suit }
} Appellant
and
} Respondent

On appeal from the Decree/Order of the Court of dated the _____ day of _____ 19 _____ and made in

Original Suit } No. of 19 .
Execution Petition }
Interlocutory Application }

548 Between

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX G—contd

Between

} Plaintiff—Petitioner .

and

} Defendant—Respondent .

Particulars of valuation

| | Rs | A | P. |
|-----------------------|----|---|----|
| 1 Valuation in Appeal | | | |
| 2 Do Suit | | | |

DECREE—ORDER —This Appeal coming on this day for hearing having been heard on the _____ day of _____ 19____, upon perusing the grounds of appeal, the Decree/Order and judgment of the lower Court and the material papers in the case and upon hearing the arguments of Mr _____ for the Appellant and of Mr _____ for the Respondent, and the appeal having stood over to this day for consideration, this Court doth order and decree that the decree/order of the lower Court be and hereby is confirmed and this appeal

This Court doth further order and decree that the Appellant (_____) do pay to the Respondent (_____) Rs _____ for costs in this appeal and do bear _____ own costs Rs _____

Particulars of costs

| Appellants | Amount | Respondents | Amount |
|----------------------------------------------------------------------------------|--------|-----------------------------|--------|
| | Rs A P | | Rs A P |
| 1 Stamp on Appeal Memo | | 1 Stamp for power | |
| 2 Stamp on vakalat | | 2 Stamp for petition | |
| 3 Stamp on copies of lower Court decree/order and judgment including copying fee | | 3 Service of process | |
| 4 Stamp on petitions | | 4 Pleader's fee on Rs _____ | |
| 5 Process fees | | | |
| 6 Fee for preparation of process | | | |
| 7 Pleader's fee on Rs _____ | | | |
| Total . | | Total. | |

Given under my hand and the seal of the Court this _____ day of _____ 19____ .

Judge.

Court

Appeal Suit }
Civil Miscellaneous } No _____ of 19____ .
Appeal Suit }

DECREE—ORDER

Forms

(Rules made by the High Court of Judicature at Madras under Section. 122)

APPENDIX G—contd

Forms Nos 12A 12B and 12C (New)

Insert the following as new forms after Form No 12 --

“No 12A

CERTIFICATE OF LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL.
(O XLV, r 7) -

(In cases where the subject-matter of the appeal is of sufficient value and the findings of the Courts are not concurrent)

Read petition presented under O XLV, r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the $\frac{\text{decree}}{\text{final order}}$ of this Court in suit No of 19

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and the other papers material to the application and upon hearing the arguments of for the petitioner and of for the respondent (if he appears) this Court doth certify that the $\frac{\text{amount}}{\text{value}}$ of the subject-matter of the suit in the Court of first instance is $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$ and the $\frac{\text{amount}}{\text{value}}$ of the subject-matter in dispute on appeal to His Majesty in Council is also of the value of $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$ or that the $\frac{\text{decree}}{\text{final order}}$ appealed from involves $\frac{\text{directly}}{\text{indirectly}}$ some-claim or question $\frac{\text{to}}{\text{respecting}}$ property of the value of $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$ and that the $\frac{\text{decree}}{\text{final order}}$ appealed from does not affirm the decision of the lower Court

No 12B

CERTIFICATE OF LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL
(O XLV, r 7)

(In case where the subject-matter is of sufficient value and the findings of the Court are concurrent)

Read petition presented under O XLV, r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the $\frac{\text{decree}}{\text{final order}}$ of this Court in suit No of 19

The

(Rules made by the High Court of Judicature at Madras under Section 122)

APPENDIX G—contd

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and other papers material to the application and upon hearing the arguments of _____ for the petitioner and of _____ for the respondent (if he appears) this Court doth certify that the $\frac{\text{amount}}{\text{value}}$ of the subject-matter of the suit in the Court of first instance is $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$ and the $\frac{\text{amount}}{\text{value}}$ of the subject-matter in dispute on appeal to His Majesty in Council is also of the value of $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$ or that the $\frac{\text{decree}}{\text{final order}}$ appealed against involves $\frac{\text{directly}}{\text{indirectly}}$ some claim or question to _____ property of the value of $\frac{\text{Rs } 10,000}{\text{upwards of Rs } 10,000}$ and that the affirming $\frac{\text{decree}}{\text{final order}}$ appealed from involves the following substantial question(s) of law, viz —

(1)

(2)

—————
No 12C

CERTIFICATE OF LEAVE TO APPEAL TO HIS MAJESTY IN COUNCIL
(O XLV, r 7)

(In cases where the subject-matter in dispute is either not of sufficient value or is incapable of money valuation)

Read petition presented under O XLV, r 3 of the Code of Civil Procedure, praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the $\frac{\text{decree}}{\text{final order}}$ of this Court in _____ suit No _____ of 19 _____

The petition coming on for hearing upon perusing the petition and the grounds of appeal to His Majesty in Council and the other papers material to the application and upon hearing the arguments of _____ for the petitioner and of _____ for the respondent (if he appears) this Court doth certify that the $\frac{\text{amount}}{\text{value}}$ of the subject matter of the

suit

(Rules made by the High Court of Judicature at Madras
under Section 122)

APPENDIX G—concl'd

suit both in the Court of first instance and in this Court is
below Rs 10,000 in value this Court in the exercise of the
incapable of money valuation discretion vested in it is satisfied that the case is a fit one for
appeal to His Majesty in Council for the reasons set forth
below, *vis* .—

(1)

(2)''

[G O No 632, Law (General), dated the 9th March, 1922]

APPENDIX H

Form No 11

Substitute the following for Form No 11 —

“No 11

NOTICE TO GUARDIAN APPOINTED OR DECLARED, OR TO FATHER OR
OTHER NATURAL GUARDIAN, OR TO THE PERSON IN CHARGE OF
THE MINOR

[O XXXII, r 3 (5)]

(Title)

To

Guardian appointed or declared, or father or other natural
guardian, or person in charge of the minor

Whereas an application has been presented on the part of
the in the above suit for the appointment of a
guardian for the suit for the said minor, you are hereby
required to take notice that, unless within days
from the service upon you of this notice an application is made
to this Court for the appointment of you or of some friend of
the said minor to act as ^{his}/_{her} guardian for the purposes of the
said suit, the Court will proceed to appoint some other person
to act as guardian of the said minor for the purpose of the
said

Given under my hand and the seal of the Court, this
day of 19 ”

Form No 11A

(Rules made by the High Court of Judicature at Madras
under Section 122)

APPENDIX H—contd

Form No 11A

Substitute the following for Form 11-A —

“No 11-A

Notice to proposed guardian of a minor $\frac{\text{defendant}}{\text{respondent}}$

Order XXXII, rule 3 (9)

To

(Y Z)

(Name, to description and place of residence of proposed
guardian)

Take notice that X $\frac{\text{plaintiff}}{\text{appellant}}$ in _____ has presented a
petition to the Court praying that you be appointed guardian
ad litem to the minor $\frac{\text{defendant(s)}}{\text{respondent(s)}}$ and that the same
will be heard on the _____ day of _____ 19 _____

2 The affidavit of X has been filed in support of this appli-
cation

3 If you are willing to act as guardian for the said
 $\frac{\text{defendant(s)}}{\text{respondent(s)}}$ you are requested to sign (or affix your mark to) the
declaration on the back of this notice

4 In the event of your failure to signify your express con-
sent in the manner indicated above, take further notice that
the Court may proceed under *Order XXXII, r 3*, Code of Civil
Procedure, to appoint some other suitable person or one of its
officers as guardian *ad litem* of the minor $\frac{\text{defendant(s)}}{\text{respondent(s)}}$ aforesaid.

Dated this _____ day of _____ 19 _____ .

(Signed)

(To be printed on the reverse)

I hereby acknowledge receipt of a duplicate of this notice
and consent to act as guardian of the minor $\frac{\text{defendant(s)}}{\text{respondent(s)}}$
therein mentioned

(Signature)

Y Z ”

Witnesses

- 1.
- 2

(P Dis No 1049 of 1931)

APPENDIX III

(Rules made by the High Court of Judicature at Madras
under Section 122)

APPENDIX G—concl'd

suit both in the Court of first instance and in this Court is
below Rs 10,000 in value incapable of money valuation this Court in the exercise of the
discretion vested in it is satisfied that the case is a fit one for
appeal to His Majesty in Council for the reasons set forth
below, viz —

(1)

(2)"

[G O No 632, Law (General), dated the 9th March, 1922]

APPENDIX H

Form No 11

Substitute the following for Form No 11 —

“No 11

NOTICE TO GUARDIAN APPOINTED OR DECLARED, OR TO FATHER OR
OTHER NATURAL GUARDIAN, OR TO THE PERSON IN CHARGE OF
THE MINOR

[O XXXII, r 3 (5)]

(Title)

To

Guardian appointed or declared, or father or other natural
guardian, or person in charge of the minor

Whereas an application has been presented on the part of
the _____ in the above suit for the appointment of a
guardian for the suit for the said minor, you are hereby
required to take notice that, unless within _____ days
from the service upon you of this notice an application is made
to this Court for the appointment of you or of some friend of
the said minor to act as ^{his}_{her} guardian for the purposes of the
said suit, the Court will proceed to appoint some other person
to act as guardian of the said minor for the purpose of the
said

Given under my hand and the seal of the Court, this
day of _____ 19 ”

Form No 11A

(Rules made by the High Court of Judicature at Madras
under Section 122)

APPENDIX H—contd

Form No 11A

Substitute the following for Form 11-A —

“No 11-A

Notice to proposed guardian of a minor $\frac{\text{defendant}}{\text{respondent}}$

Order XXXII, rule 3 (9)

To

(Y Z)

(Name, to description and place of residence of proposed
guardian)

Take notice that X $\frac{\text{plaintiff}}{\text{appellant}}$ in _____ has presented a
petition to the Court praying that you be appointed guardian
ad litem to the minor $\frac{\text{defendant(s)}}{\text{respondent(s)}}$ and that the same
will be heard on the _____ day of _____ 19 _____

2 The affidavit of X has been filed in support of this appli-
cation

3 If you are willing to act as guardian for the said
 $\frac{\text{defendant(s)}}{\text{respondent(s)}}$ you are requested to sign (or affix your mark to) the
declaration on the back of this notice

4 In the event of your failure to signify your express con-
sent in the manner indicated above, take further notice that
the Court may proceed under *Order XXXII, r 3*, Code of Civil
Procedure, to appoint some other suitable person or one of its
officers as guardian *ad litem* of the minor $\frac{\text{defendant(s)}}{\text{respondent(s)}}$ aforesaid.

Dated this _____ day of _____ 19 _____ .

(Signed)

(To be printed on the reverse)

I hereby acknowledge receipt of a duplicate of this notice
and consent to act as guardian of the minor $\frac{\text{defendant(s)}}{\text{respondent(s)}}$
therein mentioned

(Signature)

Y Z "

Witnesses

1
2

(P Dis No 1049 of 1931)

APPENDIX III

(Rules made by the High Court of Judicature at Bombay under Section 122)

APPENDIX III

(RULES MADE BY HIGH COURT OF JUDICATURE AT BOMBAY UNDER SECTION 122)

ORDER III

Rule 2

Clause (a) shall be amended to read as follows —

'(a) Persons holding on behalf of such parties either (i) a general power-of-attorney, or (ii) in the case of proceedings in the High Court of Bombay an Attorney of such High Court or an Advocate, and in the case of proceedings in any district, any such Attorney or any Advocate, or a Pleader to whom a sanad for that district has been issued, holding the requisite special power-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application of act is made or done, authorising them or him to make and do such appearances, applications and acts on behalf of such parties "

(Bombay High Court Notification No 3236, dated the 27th November, 1936)

Rule 4

In sub-rule (3) the words "or any application relating to such appeal" shall be inserted between the words "order in the suit" and "and any application or act"

ORDER V

Rule 21A

The following shall be inserted as Rule 21A —

"21A Where the plaintiff so desires, the Court may notwithstanding anything in the foregoing rules and whether the defendant resides within the jurisdiction of the Court or not, cause the summons to be addressed to the defendant at the place where he is residing, and sent to him by registered post prepaid for acknowledgment provided that such place is at a town or village in British India which is the head quarters of a district

(Rules made by the High Court of Judicature at Bombay
under Section 122)

ORDER V—contd

or recognised sub-division of a district, such as a taluka, tahsil or mahal, or in which a municipality has been established, or to which the provisions of this rule may from time to time be extended by a Notification by the High Court published in the Bombay Government Gazette. An acknowledgment purporting to be signed by the defendant shall be deemed by the Court issuing the summons to be *prima facie* proof of service. In all other cases the Court shall hold such enquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may in its opinion be necessary."

(Bombay High Court Notification, dated the 15th October, 1930)

Rule 22

The following proviso shall be added to rule 22 —

"Provided that where any such summons is to be served within the limits of the town of Bombay, it may be addressed to the defendant at the place within such limits where he is residing and may be sent to him by the Court by post registered for acknowledgment. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service shall be deemed by the Court issuing the summons to be *prima facie* proof of service. In all other cases the Court shall hold such enquiry as it thinks fit and either declare the summons to have been duly served or order such further service as may in its opinion be necessary."

ORDER VII

Rules 19 to 26

The following shall be added as rules 19 to 26 —

"19 Every plaint or original petition shall be accompanied by a memorandum in writing giving an address at which service of notice, or summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER VII—contd

immediately on being so added, file a memorandum in writing of this nature

20 An address for service filed under the preceding rule shall be within the local limits of the district Court within which the suit or petition is filed, or if he cannot conveniently give an address as aforesaid, at a place where a party ordinarily resides

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu*, or any party may apply for an order to that effect, and the Court may make such order as it thinks just

22 Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post prepaid for acknowledgment, and such service shall be deemed to be as effectual as if the notice or process had been personally served

23 Where a party engages a pleader, notice or processes on him shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the address for service given by the party

24 A party who desires to change the address for service given by him as aforesaid shall file a fresh memorandum in writing to this effect and the Court may direct the amendment of the record accordingly. Notice of such memorandum shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be served either upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER VII—concl'd

25 Nothing in these rules shall prevent the Court from directing the service of a notice or process in any other manner, if for any reasons, it thinks fit to do so

Rules not binding on Court

26 Nothing in these rules shall apply to the notice prescribed by Order XXI, rule 22 "

Applicability to notice under Order XXI, rule 22

(Bombay High Court Notification, dated the 15th October, 1930)

ORDER VIII

Rules 11 and 12

The following shall be added as rules 11 and 12 —

"11 Every party, whether original, added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in Court a memorandum in writing stating his address for service, and if he fails to do so, he shall be liable to have his defence if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act *suo motu* or on the application of any party for an order to such effect, and the Court may make such order as it thinks fit

Parties to file addresses

Provided that this rule shall not apply to a defendant who has not filed a written statement but who is examined by the Court under section 7 of the Dekkhan Agriculturists' Relief Act, 1879, or otherwise, or in any case where the Court permits the address for service to be given by a party on a date later than that specified in this rule

12 Rules 20, 22, 23, 24, 25 and 26 of Order VII shall apply, so far as may be, to addresses for service filed under the last preceding rule "

Applicability of rules 20 and 22-26 of Order VII to addresses for service

(Bombay High Court Notification, dated the 15th October, 1930)

ORDER IX

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER IX

Rule 4

Rule 4 shall be numbered rule 4 (1) and the following sub-rule (2) shall be added to it, namely —

“(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this rule ”

Rule 9

The following shall be added as sub-rule (3), namely —

“(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this rule ”

Rule 13

Rule 13 shall be numbered as rule 13 (1), and the following sub-rule shall be added to it, namely —

“(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications made under this rule ’

Rule 15

The following shall be added as rule 15 —

“In the application of this Order to appeals, so far as may be, the word ‘plaintiff’ shall be held to include an appellant, the word ‘defendant’ a respondent, and the word ‘suit’ an appeal ”

ORDER XIII

Rule 9

Between the first and second proviso to sub-rule (1), the following proviso shall be inserted, namely —

“Provided also that a copy of the decree and of the judgment filed with the memorandum of appeal under Order XII, rule 1, may be returned after the appeal has been disposed of by the Court ”

ORDER XVI

*(Rules made by the High Court of Judicature at Bombay
under Section 122)*

ORDER XVI

Rule 1A

The following shall be added as rule 1A —

“1A (1) The Court may, on the application of any party for a summons for the attendance of any person, permit that service of such summons shall be effected by such party

(2) When the Court has directed service of the summons by the party applying for the same and such service is not effected, the Court may, if it is satisfied that reasonable diligence has been used by such party to effect such service, permit service to be effected by an officer of the Court ”

Rule 2

The following shall be inserted as proviso to sub-rule (1) —

“Provided that where Government or a public officer being a party to a suit or proceeding, as such public officer supported by Government in the litigation, applies for a summons to any public officer to whom the Civil Service Regulations apply to give evidence of facts which have come to his knowledge, or of matters with which he has had to deal, as a public officer, or to produce any document from public records, the Government or the aforesaid officer shall not be required to pay any sum of money on account of the travelling and other expenses of such witness ”

Rule 3

The following shall be inserted as proviso —

“Provided that where the witness is a public officer to whom the Civil Service Regulations apply and is summoned to give evidence of facts which have come to his notice, or of facts with which he has had to deal, in his official capacity, or to produce a document from public records, the sum payable by the party obtaining the summons on account of his travelling and other expenses shall not be tendered to him ”

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER XXI

Rule 22

In rule 22 the words "two years" shall be substituted for the words "one year" wherever they occur

Rule 24

The following proviso shall be added to sub-rule (2), namely —

"Provided that a First Class Subordinate Judge, may in his special jurisdiction, send a process to another Subordinate Court in the same district for execution by the proper officer in that Court "

(Bombay High Court Notification, dated the 15th October, 1930)

Rule 44A

After rule 44 the following shall be inserted, namely —

"44A Where the property to be attached is agricultural produce, a copy of the warrant or the order of attachment shall be sent by post to the office of the Collector of the district in which the land is situate "

Rule 45

The following words shall be added to sub-rule (1) of rule 45 after substituting a semicolon for the full stop —

"and the applicant shall deposit in Court at the time of the application such sum as the Court shall deem sufficient to defray the cost of watching and tending the crop till such time "

Rule 54

The following shall be added to sub-rule (1) of rule 54 —

"Such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged "

Rule 69

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER XXI—contd

Rule 69

In sub-rule (2) of rule 69 "thirty days" shall be substituted for "seven days"

 Rule 72A

After rule 72 the following shall be inserted, namely —

"72A If leave to bid is granted to the mortgag ee of immoveable property, a reserve price as regards him shall be fixed (unless the Court shall otherwise think fit) at a sum not less than the amount then due for principal, interest and costs in case the property is sold in one lot, and not less in respect of each lot (in case the property is sold in lots) than such figure as shall appear to be properly attributable to it in relation to the amount aforesaid "

 Rule 85A

The following shall be added as rule 85A —

"85A In cases where execution has been transferred to the Collector, for the purposes of rules 84 and 85, the purchaser shall be deemed to be entitled to a set-off under rule 72 if he produces a certificate to that effect from the Court executing the decree "

(Bombay High Court Notification, No 3236, dated the 27th November, 1936)

 Rule 91A

The following rule shall be added as rule 91A —

"91A Where the execution of a decree has been transferred to the Collector and the sale has been conducted by the Collector or by an officer subordinate to the Collector, an application under rules 89, 90 or 91, and in the case of an application under rule 89, the deposit required by that rule if made to the Collector or the officer to whom the decree is referred for execution in accordance with any rule framed by the Local Government under section 70 of the Code, shall be deemed to have been made to or in the Court within the meaning of rules 89, 90 and 91 "

ORDER XXV

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER XXV

Rule 2

The following shall be added as sub-rule (4), namely —

“(4) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this rule ”

ORDER XXXII

Rule 3

The words ‘to the minor and’ in line 2 of sub-rule (4) shall be deleted

ORDER XXXIII

Rule 1

The following sentence shall be added to the ‘Explanation to rule 1, namely

“In determining whether he is possessed of sufficient means the subject-matter of the suit shall be excluded ”

ORDER XXXIV

Rule 2

Substitute for clause (d) the following —

“(d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall be entitled to apply for a final decree for foreclosure under rule 3 ”

Rule 4

In sub-rule (1) after the words “as therein mentioned” substitute “the plaintiff shall be entitled to apply for a final decree for sale under rule 5”

Rule 5

(Rules made by the High Court of Judicature at Bombay
under Section 122)

ORDER XXXIV—contd

Rule 5

In sub-rule (2) after the words "proceeds of the sale", substitute —

"(after defraying the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest at such rate as the Court deems reasonable and subsequent costs, and that the balance (if any) be paid to the defendants or other persons entitled to the same

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for such payment "

 Rule 7

For clause (d) substitute —

"(d) that, if such payment is not made on or before the day to be fixed by the Court, the defendant shall be entitled to apply for a final decree for sale or foreclosure under rule 8 "

 ORDER XXXVII

Substitute in the heading the words "Summary Procedure for the words "Summary Procedure on Negotiable Instruments"

 Rule 2

The following shall be substituted for sub-rules (1) and (2) of rule 2 —

"2(1) All suits upon bills of exchange, hundis or promissory notes and all suits in which the Plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant with or without interest, arising on contract express or implied, or on an enactment where the sums ought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty, or on a guarantee, where the claim against the principal

(Rules made by the High Court of Judicature at Bombay
under Section 122)

ORDER XXXVII—*contd*

is in respect of a debt or a liquidated demand only, or in suits in which the landlord seeks to recover possession of immoveable property, with or without a claim for rent or mesne profits against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent or against persons claiming under such tenant may, in case the Plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed, but the summons shall be in Form No 4 in appendix B or in such other form as may be from time to time prescribed

2(2) In any case in which the plaint and summons are in such forms respectively, the defendant shall not defend the suit unless he enters an appearance and obtains leave from a Judge as hereinafter provided so to defend, and in default of his entering an appearance and of his obtaining such leave to defend, the allegations in the plaint shall be deemed to be admitted, and the Plaintiff shall be entitled to a decree for possession and/or as the case may be for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith "

Rule 3

The following shall be substituted for rule 3 —

"3(1) The plaintiff shall together with the writ of summons under rule 2 serve on the defendant a copy of the plaint and exhibits thereto, and the defendant may at any time within ten days of such service enter an appearance. The defendant may enter an appearance either in person or by an attorney. In either case an address for service shall be given in the memorandum of appearance, and, unless otherwise ordered, all summonses, notices, or other judicial process required to be served on the defendant shall be deemed to have been duly served on him if left at his address for service. On the day of entering appearance notice of the appearance shall be given to the plaintiff's attorney (or if the plaintiff sues in person to the plaintiff

*(Rules made by the High Court of Judicature at Bombay
under Section 122)*

ORDER XXXVII—*contd*

plaintiff himself) either by notice delivered at, or sent by pre-paid letter directed to, the address of the plaintiff's attorney or of the plaintiff, as the case may be

(2) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment returnable not less than ten clear days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit

(3) The defendant may at any time within ten days from the service of such summons for judgment by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend the suit. Leave to defend may be granted to him unconditionally or upon such terms as to the Judge appear just

(4) At the hearing of such summons for judgment if (a) the defendant has not applied for leave to defend or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith, or if (b) the defendant be permitted to defend as to the whole or any part of the claim the Judge shall direct that on failure to complete the security (if any) or to carry out such other directions as the Judge may have given within the time limited in the order, the plaintiff shall be entitled to judgment forthwith "

*(Bombay High Court Notification, No 2737, dated the 29th
September, 1936)*

ORDER XLI

Rule 3A

After rule 3 the following rule shall be inserted, namely —

"3A Where an appellant applies for delay to be excused, notice to show cause shall at once be issued to the respondent and the matter shall be finally decided before notice is issued to the Court from whose decree the appeal is preferred under rule 13 "

Rule 38

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER XLI—contd

Rule 38

The following shall be added as rule 38 —

“38 (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, subsequently altered under Order VII, rule 24, Order VIII, rule 12 shall hold good during all appellate proceedings arising out of the original suit or petition, subject to any alteration under sub-rule (3)

Address for service filed to hold good during appellate proceedings

(2) Every memorandum of appeal shall state the address for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses

(3) Rules 22, 23 and 24 of Order VII shall apply, so far as may be, to appellate proceedings ”

(Bombay High Court Notification, dated the 15th October, 1930)

ORDER XLIII

Rule 1

Clause (w) shall be deleted

ORDER XLV

Rule 3

In sub-rule (2) after the words “to show cause why the said certificate should not be granted” the following words shall be inserted, namely —“unless it thinks fit to refuse the certificate ”

Rule 7A

After rule 7 the following rule shall be inserted, namely —

“7A No such security as is mentioned in rule 7(I), clause (a), shall be required from the Secretary of State for India in Council or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity ”

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER XLV—contd

Rule 15

The words "the original" shall be substituted for the words "a certified copy of the" occurring in rule 15(1) and a proviso shall be added to the Rule to empower the Court in special cases to act on a certified copy

Rule 15(1) shall therefore read as follows —

"15(1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by the original decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred, provided that the Court may in its discretion, if for special reasons it thinks fit to do so, act on a certified copy of the decree passed or order made in appeal"

(Bombay High Court Notification, No 3236, dated the 27th November, 1936)

ORDER XLVI

Rule 8

The following shall be added as rule 8 —

"8 Rule 38 of Order XLI shall apply, so far as may be, to Applicability of Rule 38 of proceedings under this Order "
Order XLI

(Bombay High Court Notification, dated the 15th October, 1930)

ORDER XLVII

Rule 5

In rule 5, for the word "six" the word "two" shall be substituted

Rule 10

The following shall be added as rule 10 —

"10 Rule 38 of Order XLI shall apply, so far as may be, to Applicability of Rule 38 of proceedings under this Order "
Order XLI

(Bombay High Court Notification, dated the 15th October, 1930)

ORDER XLIX

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER XLIX

Rule 3

(a) *The following clause shall be inserted as clause (1) namely,*

“(1) rule 21A of Order V,”

(b) *For the existing clause (1) the following shall be substituted, namely,*

“(1a) rule 10, rule 11, clause (b) and (c), and rules 19 to 26 of Order VII,”

(c) *Below clause (1a) the following shall be inserted, namely,*
“(1b) rules 11 and 12 of Order VIII,”

(d) *Below clause (6), the following shall be inserted, namely,*
“(7) rule 38 of Order XLI”

(e) *The word “and” immediately preceding paragraph (6) shall be omitted and the following paragraph shall be inserted between paragraphs (5) and (6), namely —*

“(5a) rule 72A of Order XXI, and”

(f) *For the word and figures “rule 35” occurring below item (6) of rule 3, the words and figures “rules 31 and 35” shall be substituted*

[Bombay High Court Notification, dated the 15th October, 1930, as to items (a) to (d) only]

Rule 4

The following shall be added as rule 4 —

“4 Under section 128, paragraph 2, clause (i) of the Civil Procedure Code of 1908, the following power is delegated to the Registrar of the High Court, Appellate Side, Bombay

“Where on a memorandum of appeal presented within the time prescribed for the same the whole or any part of the fee prescribed by the law for the time being in force relating to Court-fees has not been paid, the Registrar may in his discretion allow the appellant to pay the whole or part as the case may be of such Court-fees and may admit the appeal to the register even though the subsequent payment of Court-fee may have been made after the time prescribed for presentation of the appeal”

(Rules made by the High Court of Judicature at Bombay under Section 122)

ORDER LII

The following shall be added as Order LII —

“1 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under section 115 of the Code ”
Applicability of Rule 38 of Order XLI to Proceedings under section 115

(Bombay High Court Notification, dated the 15th October, 1930)

APPENDIX B

Forms Nos 1, 2, 3, 5 and 6

The following notes shall be inserted in red ink in forms Nos 1, 2, 3, 5 and 6 —

“Also take notice that in default of your filing an address for service on or before the date mentioned you are liable to have your defence struck out ”

(Bombay High Court Notification, dated the 15th October, 1930)

Form No 4

The following Form shall be substituted for Form No 4 —

“No 4

SUMMONS IN SUMMARY SUIT

(Order 37, rule 2)

(Title)

To

(Name, description and place of residence)

Whereas has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for (possession of and for Rs for rent and/or mesne profits, or for Rs for and interest, or as the case may be) you are hereby summoned within ten days from the service hereof to cause an appearance to be entered for you, in default whereof the plaintiff will be entitled after the expiration of such ten days to obtain a decree for possession and/or as the case may be for any sum not exceeding the sum of Rs and the sum of Rs for costs together with such interest, if any, as the Court may order

(Rules made by the High Court of Judicature at Bombay under Section 122)

APPENDIX B—contd

If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to ask the Court for leave to defend the suit

Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend

Given under my hand and the seal of the Court, this day of 19

Judge

Rule V

The following form shall be added in Appendix B, Civil Procedure Code, as Form No 4A —

“No 4A

SUMMONS FOR JUDGMENT IN SUMMARY SUIT

[Order 37, rule 3(1)]

In the

Court

Suit No

of 19

Plaintiff

versus

Defendant

Upon reading the affidavit of (the plaintiff or as may be)

Let all parties concerned attend the (Judge or Subordinate Judge, as may be) on day the

day of 19, at o'clock in the noon on the hearing of an application on the part of the plaintiff that he be at liberty to sign judgment in this suit

(Rules made by the High Court of Judicature at Bombay
under Section 122)

APPENDIX B—contd

against the defendant (or if against one or some of several insert
names) for (possession and/or for Rs _____ for
and interest, or as the case may be) and costs

Dated the _____ day of _____ 19 _____

This summons was taken out by _____ of
Pleader for _____

To _____

(Bombay High Court Notification, No 2737, dated the 29th
September, 1936)

Form No 10

Form No 10 shall be amended to read as follows —

“No 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT

(O, V, r 23)

(Title)

Read proceeding from the _____ forwarding
for service on _____ in Suit No _____ of 19 _____ of that
Court

Read Serving Officer's endorsement stating that the
_____ and proof of the above having been duly
taken by me on the oath of _____

and _____ it is ordered
that the _____ be returned to the
_____ with this proceeding

I hereby declare that the said summons on _____ have
been duly served

Judge

NOTE—This form will be applicable to process other than summons the
service of which may have to be effected in the same manner ”

APPENDIX DForm No 4¹

(a) In line 4 of Form No 4 for “realization” substitute “the
day hereinafter referred to”

(b) For clause (2) of the said form, substitute —

“(2) That if such payment is not made on or before the
said day of _____ 19 _____ the plaintiff shall be
entitled to apply to the Court for a final decree for sale ”

(c) Delete clause (3) of the said form

Form No 5

¹See footnote* on p 538

(Rules made by the High Court of Judicature at Bombay under Section 122)

APPENDIX D—contd

Form No 5 *

For clause (2) substitute —

“(2) That if such payment is not made on or before the said day of 19 , the defendant shall be entitled to apply for a final decree for foreclosure or sale ”

Form No 10A ¹

Add the following form as Form No 10A —

“No 10A

FINAL DECREE FOR SALE

(Title)

Upon reading the decree passed in the above suit on the day of 19 , and the application of the plaintiff dated the day of 19 , and after hearing the plaintiff and the pleader for the plaintiff and the pleader for the defendant, and it appearing that the payment directed by the said decree has not been made

It is hereby decreed as follows —

(1) That the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest at per cent per annum and subsequent costs, and that the balance, if any, be paid to the defendant

(2) That if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance ”

APPENDIX IV

¹ See footnote* on p 538

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX IV

RULES MADE BY THE HIGH COURT OF JUDICATURE
AT ALLAHABAD UNDER SECTION 122

ORDER IV

Rule 1

(a) For rule 1 (1) substitute the following —

“1 (1) Every suit shall be instituted by presenting to the court or such officer as it appoints in this behalf a plaint, together with a true copy for service with the summons upon each defendant, unless the court for good cause shown allows time for filing such copies

(2) The court-fee chargeable for such service shall be paid in the case of suits when the plaint is filed and in the case of all other proceedings when the process is applied for ”

*(b) Re-number the present sub-rule (2) as sub-rule (3)
(U P Gazette, Part II, dated the 24th July, 1926)*

ORDER V

Rule 2

Omit the words “or, if so permitted, by a concise statement ”

(U P Gazette, Part II, dated the 24th July, 1926)

Rule 4A

Add the following rule 4A

“4A Except as otherwise provided, in every interlocutory proceeding and in every proceeding after decree in the trial court, the court may, either on the application of any party, or of its own motion, dispense with service upon any defendant who has not appeared or upon any defendant who has not filed a written statement ”

(U P Gazette, Part II, dated the 24th July, 1926)

Rule 15

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER V—contd

Rule 15

For the words "Where in any suit the defendant cannot be found" read "When the defendant is absent or cannot be personally served "

(U P Gazette, Part II, dated the 24th July, 1926)

Rule 25

For the word "shall" in the third line read the word "may "

(U P Gazette, Part II, dated the 24th July, 1926)

Rule 25A

Add the following as rule 25A —

"25A When the defendant resides in British India but outside the limits of the United Provinces of Agra and Oudh, the court may, in addition to, or in substitution for any other mode of service, send the summons by post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by the defendant, or an endorsement by a postal servant that the defendant refused service, may be deemed by the court issuing the summons to be *prima facie* proof of service "

(U P Gazette, Part II, dated the 24th July, 1926)

Rule 26

After the words "the summons may" insert the words "in addition to, or in substitution for the method permitted by rule 25 "

(U P Gazette, Part II, dated the 24th July, 1926)

Rule 28

(a) The present rule 28 shall be numbered 28 (1)

(b) Add the following as rule 28 (2) —

"(2) Where the address of such Commanding Officer is not known, the court may apply to the officer commanding the station

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER V—*contd*

station in which the defendant was serving when the cause of action arose to supply such address, in the manner prescribed in sub-rule (4) of this rule ”

(c) *Add the following sub-rules (3), (4) and (5) —*

“(3) Where the defendant is an officer of His Majesty’s military forces, wherever it is practicable service shall be made on the defendant in person

(4) Where such defendant resides outside the jurisdiction of the court in which the suit is instituted, or outside British India, the court may apply over the seal and signature of the court to the officer commanding the station in which the defendant was residing when the cause of action arose, for the address of such defendant, and the officer commanding to whom such application is made shall supply the address of the defendant or all such information that it is in his power to give, as may lead to the discovery of his address

(5) Where personal service is not practicable, the court shall issue the summons to the defendant at the address so supplied by registered post ”

Rule 29

In rule 29, sub-rule (1), line 2, for the word and figures “rule 28” read “rule 28 (1)”

Rules 31 and 32

Add the following new rules 31 and 32 —

“31 An application for the issue of a summons for a party or a witness shall be made in the form prescribed for the purpose No other forms shall be received by the court

32 Ordinarily every process, except those that are to be served on Europeans, shall be written in the court vernacular But where a process is sent for execution to the court of a district where a different language is in ordinary use, it shall be written in English and shall be accompanied by a letter in English requesting its execution

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER V—concl'd

In cases where the return of service is in a language different from that of the district from which it is issued, it shall be accompanied by an English translation "

ORDER VII

Rule 9

(a) In rule 9 (a) for the semicolon after "it" in clause (1), substitute a full stop and delete the rest of this clause as well as clauses (2) and (3)

(b) Re-number clause (4) as clause (2), deleting the words "or statements" therein

Rule 17

At the end of clause (2) add the following proviso —

"Provided that, if the copy is not written in English or is written in a character other than the ordinary Persian or Nagri character in use, the procedure laid down in Order XIII, rule 12, as to verification shall be followed, and in that case the court or its officer need not examine or compare the copy with the original "

Rules 19 to 26

Add the following new rules 19 to 26 —

"19 Every plaint or original petition shall be accompanied by a proceeding giving an address written in English in block letters at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature

20 An address for service filed under the preceding rule shall be within the local limits of the district court within which the suit or petition is filed, or of the district court within which the party ordinarily resides, if within the limits of the United Provinces of Agra and Oudh

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the court *suo motu* or any party may apply

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER VII—*contd*

apply for an order to that effect, and the court may make such order as it thinks just

22 Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served, is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served.

23 Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Order III, rule 5, unless the court directs service at the address for service given by the party.

24 A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the court thinks fit.

25 Nothing in these rules shall prevent the court from directing the service of a notice or process in any other manner, if, for any reasons, it thinks fit to do so."

ORDER VIII

Rules 11 and 12

Add the following new rules 11 and 12 —

"11 Every party, whether original, added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in court a proceeding stating his address for service written in English in block letters and if he fails to do so he shall be liable to have his defence, if any, struck

out

577

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER VIII—contd

out and to be placed in the same position as if he had not defended. In this respect the court may act *suo motu* or on the application of any party for an order to such effect, and the court may make such order as it thinks just

12 Rules 20, 22, 23, 24, 25 and 26 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule "

 Rule 26

Deleted (24th July, 1926)

 ORDER IX

Rule 2

After the words in the fourth line, "for such service" insert the words "or that the plaintiff has failed to comply with the rules for filing the copy of the plaint for service on the defendant "

 Rule 13(2)

Add the following proviso —

"Provided also that no such decree shall be set aside merely on the ground of irregularity in the service of summons, if the court is satisfied that the defendant knew, or but for his wilful conduct would have known of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim "

 ORDER XIII

Rules 12 and 13

Add the following new rules 12 and 13 —

"12 Every document not written in the court vernacular or in English, which is produced (a) with a plaint or (b) at the first hearing or (c) at any other time tendered in evidence in any suit, appeal, or proceeding, shall be accompanied by a correct translation of the document into the court vernacular. If any such document is written in the court vernacular but in characters other than the ordinary Persian or Nagri characters in use, it shall be accompanied by a correct transliteration of its contents into the Persian or Nagri character

The

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XIII—*contd*

The person making the translation or transliteration shall give his name and address and verify that the translation or transliteration is correct. In case of a document written in a script or language not known to the translator or to the person making the transliteration, the person who reads out the original document for the benefit of the translator or the person making the transliteration shall also verify the translation and transliteration by giving his name and address and stating that he has correctly read out the original document.

13 When a document included in the list, prescribed by rule 1, has been admitted in evidence, the court shall, in addition to making the endorsement prescribed in rule 4(1), mark such document with serial figures in the case of documents admitted as evidence for a plaintiff, and with serial letters in the case of documents admitted as evidence for a defendant, and shall initial every such serial number or letter. When there are two or more parties defendants, the documents of the first party defendant may be marked A-1, A-2, A-3, etc and those of the second party B-1, B-2, B-3, etc. When a number of documents of the same nature is admitted, as for example a series of receipts for rent, the whole series shall bear one figure or capital letter or letters and a small figure or small letter shall be added to distinguish each paper of the series."

 ORDER XVI
Rule 1

The following proviso to be added —

"Provided that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to call any witness not named in a list, which must be filed in court before the hearing of evidence on his behalf has commenced, without an order of the Judge made in writing and stating the reasons therefor."

Rule 2(4)

579

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XVI—contd

Rule 2(4)

To rule 2, add the following as sub-rule (4) —

‘ 2(4) This rule shall not apply, in cases to which Government is a party, in the case of witnesses who are Government servants whose salary exceeds Rs 10 per mensem and who are summoned to give evidence in their public capacity at a court situated more than five miles from their headquarters ’

Rule 7

For the tenth word “and” substitute a comma and between the figure “6” and the word “shall” add the word and figure “and 10 ”

Rule 8

For the words in line 1 “under this order shall be served” read “under this order may by leave of the court be served by the party or his agent, applying for the same, by personal service, and failing such service shall be served ”

Rule 10

I—In sub-rule (1) substitute a colon () for the fullstop () after the word “summons”, and add the proviso

“Provided that the Court need not examine the serving-officer if the person has been summoned only to produce a document and has attended and admitted receipt of the summons but has failed to produce the document ”

II—In sub-rule (2)

(a) between the word “proclamation” and the word “requiring” insert the words

“or, if he is present, an order in writing to be signed by him”

(b) for the words “and a copy of such proclamation” substitute the words

“and a copy of the proclamation if issued”

III—In sub-rule (3) between the word “proclamation” and the words “or at any time afterwards” insert the words

“or an order in writing”

Rules 22 and 23

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XVI—contd

Rules 22 and 23

Add the following new rules 22 and 23 —

'22 (1) Save as provided in this rule and in rule 2, the court shall allow travelling and other expenses on the following scale —

- (a) in the case of witnesses of the class of cultivators, labourers, and menials, six annas a day,
- (b) in the case of witnesses of a better class, such as zamindars, traders, pleaders, and persons of corresponding rank, from eight annas to two rupees a day, as the court may direct, and
- (c) in the case of witnesses of superior rank, including officers of Government in receipt of a salary of not less than Rs 200 a month, from three to five rupees a day

(2) If a witness demand any sum in excess of what has been paid to him, such sum shall be allowed if he satisfies the court that he has actually and necessarily incurred the additional expense

Illustration —A post office or railway employè summoned to give evidence is entitled to demand from the party, on whose behalf or at whose instance he is summoned, the travelling and other expenses allowed to witnesses of the class or rank to which he belongs and in addition the sum for which he is liable as payment to the substitute officiating during his absence from duty. The sum so payable in respect of the substitute will be certified by the official superior of the witness on a slip, which the witness will present to the court from which the summons issued

(3) If a witness be detained for a longer period than one day the expenses of his detention shall be allowed at such rate, not usually exceeding that payable under clause (1) of this rule, as may seem to the court to be reasonable and proper

Provided that the court may, for reasons stated in writing, allow expenses on a higher scale than that hereinbefore prescribed

23 In cases to which Government is a party, Government servants whose salary exceeds Rs 10 per mensem and all police constables whatever their salary may be who are summoned to give evidence in their official capacity at a court

situated

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XVI—contd

Rule 2(4)

To rule 2, add the following as sub-rule (4) —

' 2(4) This rule shall not apply, in cases to which Government is a party, in the case of witnesses who are Government servants whose salary exceeds Rs 10 per mensem and who are summoned to give evidence in their public capacity at a court situated more than five miles from their headquarters "

Rule 7

For the tenth word "and" substitute a comma and between the figure "6" and the word "shall" add the word and figure "and 10 "

Rule 8

For the words in line 1 "under this order shall be served" read "under this order may by leave of the court be served by the party or his agent, applying for the same, by personal service, and failing such service shall be served "

Rule 10

I—In sub-rule (1) substitute a colon () for the fullstop () after the word "summons", and add the proviso

"Provided that the Court need not examine the serving-officer if the person has been summoned only to produce a document and has attended and admitted receipt of the summons but has failed to produce the document "

II—In sub-rule (2)

(a) between the word "proclamation" and the word "requiring" insert the words

"or, if he is present, an order in writing to be signed by him"

(b) for the words "and a copy of such proclamation" substitute the words

"and a copy of the proclamation if issued"

III—In sub-rule (3) between the word "proclamation" and the words "or at any time afterwards" insert the words

"or an order in writing"

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XVI—contd

Rules 22 and 23

Add the following new rules 22 and 23 —

'22 (1) Save as provided in this rule and in rule 2, the court shall allow travelling and other expenses on the following scale —

- (a) in the case of witnesses of the class of cultivators, labourers, and menials, six annas a day,
- (b) in the case of witnesses of a better class, such as zamindars, traders, pleaders, and persons of corresponding rank, from eight annas to two rupees a day, as the court may direct, and
- (c) in the case of witnesses of superior rank, including officers of Government in receipt of a salary of not less than Rs 200 a month, from three to five rupees a day

(2) If a witness demand any sum in excess of what has been paid to him, such sum shall be allowed if he satisfies the court that he has actually and necessarily incurred the additional expense

Illustration —A post office or railway employè summoned to give evidence is entitled to demand from the party, on whose behalf or at whose instance he is summoned, the travelling and other expenses allowed to witnesses of the class or rank to which he belongs and in addition the sum for which he is liable as payment to the substitute officiating during his absence from duty. The sum so payable in respect of the substitute will be certified by the official superior of the witness on a slip, which the witness will present to the court from which the summons issued

(3) If a witness be detained for a longer period than one day the expenses of his detention shall be allowed at such rate, not usually exceeding that payable under clause (1) of this rule, as may seem to the court to be reasonable and proper

Provided that the court may, for reasons stated in writing, allow expenses on a higher scale than that hereinbefore prescribed

23 In cases to which Government is a party, Government servants whose salary exceeds Rs 10 per mensem and all police constables whatever their salary may be who are summoned to give evidence in their official capacity at a court

tuated

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XVI—concl'd

situated more than five miles from their headquarters, shall be given a certificate of attendance by the court in lieu of travelling and other expenses ”

 ORDER XVII

Rules 1, 2 and 3

(a) *Add the following further proviso to rule 1 —*

“Provided further that no such adjournment shall be granted for the purpose of calling a witness not previously summoned or named, nor shall any adjournment be utilised by any party for such purpose, unless the Judge has made an order in writing under the proviso to Order XVI, rule 1 ”

(b) *Add to rule 2 —*

“Where on any such day the evidence, or a substantial portion of the evidence, of any party has been recorded and such party fails to appear, the court may in its discretion proceed with the case as if such party were present, and may dispose of it on the merits

Explanation —No party shall be deemed to have failed to appear if he is either present or is represented in court by an agent or pleader, though engaged only for the purpose of making an application ”

(c) *Amend rule 3 —*

“Where any party to a suit, to whom time has been granted, fails, without reasonable excuse, to produce his evidence, or to cause the attendance of his witnesses, or to comply with any previous order, or to perform any other act, necessary to the further progress of the suit, for which time has been allowed the court may, whether such party is present or not, proceed to decide the suit on the merits ”

 ORDER XVIII

Rules 2 and 3

For the present rules 2 and 3, substitute the following

“2 (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party
having

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XVIII—contd

having the right to begin shall state his case, indicating the relevancy of each of the documents produced by him, and the nature of the oral evidence which he proposes to adduce and shall then call his witnesses in support of the issues which he is bound to prove

(2) The other party shall then state his case in the manner aforesaid and produce his evidence (if any)

3 (1) Where there are several issues the burden of proving some of which lies on the other party, the party beginning may, at his option, either state his case in the manner aforesaid and produce his evidence on those issues or reserve the statement of his case and the production of his evidence on those issues by way of answer to the evidence produced by the other party, and, in the latter case, the party beginning may state his case in the manner aforesaid and produce evidence on those issues after the other party has produced all his evidence

(2) After both parties have produced their evidence, the party beginning may address the Court on the whole case, the other party may then address the Court on the whole case, and the party beginning may reply generally on the whole case, provided that in doing so he shall not, without the leave of the Court, raise questions which should have been raised in the opening address "

Rule 19

Add as a new rule —

"19 (1) The Judge shall record in his own hand in English all orders passed on applications, other than orders of a purely routine character

(2) The Judge shall record in his own hand in English all admissions and denials of documents, and the English proceedings shall show how all documents tendered in evidence have been dealt with from the date of presentation down to the final order admitting them in evidence or rejecting them

(3) The Judge shall record the issues in his own hand in English, and the issues shall be signed by the Judge and shall form part of the English proceedings "

ORDER XIX

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XIX

Rules 4 to 15

Add the following new rules 4 to 15 —

4 Affidavits shall be entitled in the court of _____ at
(naming such court) If the affidavit be in support
of, or in opposition to, an application respecting any case in
the court, it shall also be entitled in such case If there be
no such case it shall be entitled *In the matter of the petition*
of

5 Affidavits shall be divided into paragraphs, and every
paragraph shall be numbered consecutively and, as nearly as
may be, shall be confined to a distinct portion of the subject

6 Every person making any affidavit shall be described
therein in such manner as shall serve to identify him clearly,
and where necessary for his purpose, it shall contain the full
name, the name of his father, of his caste or religious per-
suasion, his rank or degree in life, his profession, calling, occu-
pation or trade, and the true place of his residence

7 Unless it be otherwise provided, an affidavit may be
made by any person having cognizance of the facts deposed to
Two or more persons may join in an affidavit, each shall
depose separately to those facts which are within his own
knowledge, and such facts shall be stated in separate para-
graphs

8 When the declarant in any affidavit speaks to any fact
within his own knowledge, he must do so directly and positively,
using the words 'I affirm' or 'I make oath and say'

9 Except in interlocutory proceedings, affidavits shall
strictly be confined to such facts as the declarant is able of
his own knowledge to prove In interlocutory proceedings,
when the particular fact is not within the declarant's own
knowledge, but is stated from information obtained from
others, the declarant shall use the expression 'I am in-
formed,' and, if such be the case, 'and verily believe it to be
true,' and shall state the name and address of, and
sufficiently describe for the purposes of identification, the
person or persons from whom he received such information
When the application or the opposition thereto rests on facts
disclosed in documents or copies of documents produced from

any

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XIX—*contd*

any court of justice or other source, the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the facts disclosed in such documents

10 When any place is referred to in an affidavit, it shall be correctly described. When in an affidavit any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of the identification of such person, shall be given in the affidavit.

11 Every person making an affidavit for use in a civil court shall, if not personally known to the person before whom the affidavit is made, be identified to that person by some one known to him, and the person before whom the affidavit is made shall state at the foot of the affidavit the name, address, and description of him by whom the identification was made as well as the time and place of such identification.

11A Such identification may be made by a person—

- (a) personally acquainted with the person to be identified, or
- (b) satisfied, from papers in that person's possession or otherwise, of his identity

Provided that in case (b) the person so identifying shall sign on the petition or affidavit a declaration in the following form, after there has been affixed to such declaration in his presence the thumb impression of the person so identified —

Form

I (name, address and description) declare that the person verifying this petition (or making this affidavit) and alleging himself to be A B has satisfied me (here state by what means, e g, from papers in his possession or otherwise) that he is A B

12 No verification of a petition and no affidavit purporting to have been made by a *pardah-nashin* woman who has not appeared unveiled before the person before whom the verification or affidavit was made, shall be used unless she has been identified in manner already specified and unless such petition

or

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XIX—concl'd

or affidavit be accompanied by an affidavit of identification of such woman made at the time by the person who identified her.

13 The person before whom any affidavit is about to be made shall, before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents thereof, and if the person proposing to make such affidavit state that he has not read the affidavit or appears not to understand the contents thereof, or appears to be illiterate, the person before whom the affidavit is about to be made shall read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same, and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made

14 The person before whom an affidavit is made, shall certify at the foot of the affidavit the fact of the making of the affidavit before him and the time and place when and where it was made, and shall for the purpose of identification mark and initial any exhibits referred to in the affidavit

15 If it be found necessary to correct any clerical error in any affidavit, such correction may be made in the presence of the person before whom the affidavit is about to be made, and before, but not after the affidavit is made. Every correction so made shall be initialled by the person before whom the affidavit is made, and shall be made in such manner as not to render it impossible or difficult to read the original word or words, figure or figures, in respect of which the correction may have been made "

 ORDER XX

Rule 7A

Add the following new rule 7A —

"7A A Court, other than a Court subordinate to the District Court exercising insolvency jurisdiction, passing an order under section 47 or 144 of the Code of Civil Procedure or one against which an appeal is allowed by section 104 or rule 1 of Order XLIII, or an order in any case, against which an appeal is allowed

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XX—contd

allowed by law, shall draw up a formal order embodying its adjudication and the memorandum of costs incurred by the parties "

Rule 19

In rule 19, sub-rule (1)

- (a) Substitute a comma for the full-stop at the end, and
 (b) at the end add the following —

"but no decree shall be passed against the plaintiff unless the claim to set off was within limitation on the date on which the written statement was presented "

Rule 21

Add the following new rule 21 —

"21 (1) Every decree and order as defined in section 2, other than a decree or order of a court of small causes or of a court in the exercise of the jurisdiction of a court of small causes, shall be drawn up in the court vernacular. As soon as such decree or order has been drawn up, and before it is signed, the Munsarim shall cause a notice to be posted on the notice board stating that the decree or order has been drawn up, and that any party or the pleader of any party may, within six working days from the date of such notice, peruse the draft decree or order and may sign it, or may file with the Munsarim an objection to it on the ground that there is in the judgment a verbal error or some accidental defect not affecting a material part of the case, or that such decree or order is at variance with the judgment or contains some clerical or arithmetical error. Such objection shall state clearly what is the error, defect, or variance alleged, and shall be signed and dated by the person making it

(2) If any such objection be filed on or before the date specified in the notice, the Munsarim shall enter the case in the earliest weekly list practicable, and shall, on the date fixed, put up the objection together with the record before the Judge who pronounced the judgment, or, if such Judge has ceased to be the Judge of the court, before the Judge then presiding

(3) If

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XX—*concl'd*

(3) If no objection has been filed on or before the date specified in the notice, or if an objection has been filed and disallowed, the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8

(4) If an objection has been duly filed and has been allowed, the correction or alteration directed by the Judge shall be made. Every such correction or alteration in the judgment shall be made by the Judge in his own handwriting. A decree amended in accordance with the correction or alteration directed by the Judge shall be drawn up, and the Munsarim shall date the decree as of the day on which the judgment was pronounced and shall lay it before the Judge for signature in accordance with the provisions of rules 7 and 8

(5) When the Judge signs the decree he shall make an autograph note stating the date on which the decree was signed "

ORDER XXI

Rule 5

For the word "district" where it occurs after the words 'same' and "different" read "province"

Rule 6

Rule 6 shall be re-numbered 6 (1) and the following sub-rule (2) shall be added —

"(2) Such copies and certificates may, at the request of the decree-holder, be handed over to him or to such person as he appoints, in a sealed cover to be taken to the court to which they are to be sent"

Rule 11

For clause (f) of sub-rule (2) substitute the following —

"(f) The date of the last application, if any "
and add the following proviso to sub-rule (2) —

'Provided that when the applicant files with his application a certified copy of the decree, the particulars specified in clauses (b), (c) and (h) need not be given in the application "

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—contd

Rule 17

Between the words "been complied with" and "the court may" insert the words "and if the decree-holder fails to remedy the defect within a time to be fixed by the Court"

Rule 22

(a) For the words "one year," wherever they occur in this rule, read the words "three years"

(b) To sub-rule (2) shall be added the following proviso —

"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained substantial injury by reason of such omission"

Rule 24 (3)

After the words at the end of the sub-rule, "be executed," add the words "and a day shall be specified on or before which it shall be returned to court."

Rule 25 (2)

Substitute the following for sub-rule (2) —

"25 (2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court may examine him personally or upon affidavit touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result"

Rule 26 (3)

For the words "the court may" read the words "the court shall, unless good cause to the contrary is shown"

Rule 29

After the words "the person against whom the decree was passed" insert the words "or any person whose interests are affected by the decree or by any order made in execution thereof"

Rule 31 (2) and (3)

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—contd

Rule 31 (2) and (3)

For the words wherever they occur in each sub-rule, "six months" read the words "three months or such extended time as the court may for good cause direct"

Rule 32 (3)

For the words "one year" read the words "three months," and after the words at the end of the sub-rule, "on his application," add the words "the court may for good cause extend the time"

Rule 39 (5)

Delete the words "in the Civil Prison"

Rule 53

(a) In sub-rule (1) (b) in the third line, and in sub-rule (4) in the eighth line, after the words "to such other court" add the words "and to any other court to which the decree has been transferred for execution"

(b) In sub-rule (6) for the words "after receipt of notice thereof" read the words "after receipt of notice, or with the knowledge thereof"

Rule 54

Add the following as sub-rule (3) —

"(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property, and against all other transferees from the judgment-debtor from the date on which such order is made"

Rule 55

Substitute the following for rule 55 —

"55 (1) Notice shall be sent to the sale officer executing a decree of all applications for rateable distribution of assets made

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—contd

made under section 73 (1) in respect of the property of the same judgment-debtor by persons other than the holder of the decree for the execution of which the original order was passed.

(2) Where—

- (a) the amount decreed [which shall include the amount of any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1),] with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1),] is otherwise made through the Court or certified to the Court, or
- (c) the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-section (1),] is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule "

Rule 58

Add the following words to sub-rule (2) —

"(or objection), or may in its discretion make an order postponing the delivery of the property after the sale pending such investigation. And in no case shall the sale become absolute until the claim or objection has been decided "

Rule 68

For the words "fifteen days" read the words "seven days "

Rule 69 (2)

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—contd

Rule 69 (2)

For rule 69 (2) substitute the following —

“Where a sale has been once adjourned under sub-rule (1), a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it

Provided that where the adjournment is for a period not longer than 14 days from the date originally fixed for sale, no fresh proclamation shall be necessary

Provided also that the court may dispense with the consent of any judgment-debtor who has failed to attend in answer to a notice issued under rule 66 ”

Rule 72

In sub-rule (2) for the words “with such permission” read the words “property sold,”— and re-number this sub-rule “72 ” and delete sub-rules (1) and (3)

Rule 89

In sub-rule (1) of this rule for the words “any person before such sale,” read the words “the judgment-debtor, or any person deriving title through the judgment-debtor, or any person holding an interest in the property ”

Rule 90

For the words “Provided that no” read the words “Provided that—

(a) no * * * irregularity or fraud”,
and add the following proviso —

“(b) no such application shall be entertained upon any ground which could have been taken by the applicant on or before the date on which the sale proclamation was drawn up ”

Rule 92

In sub-rule (1) after the words “the Court shall,” insert the words “subject to the provisions of rule 58 (2) ’

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—*contd**Rule 98*

After the words "at his instigation," wherever they occur, add the words "or on his behalf," and after the words at the end of the rule, "thirty days" add the words "(thirty days), and may order the person or persons whom it holds responsible for such resistance or obstructions to pay jointly or severally in addition to costs, reasonable compensation to the decree-holder for the delay and expense caused to him in obtaining possession. The order to pay costs and compensation [vide Court's Notification No 6376/35 (a), dated 12th November, 1929] made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree "

Rule 99

For the words in brackets "(other than the judgment-debtor)" read the words in brackets "(other than the persons mentioned in rules 95 and 98 thereof) "

Rules 104 to 140

Add the following new rules 104 to 140 —

"104 When the certificate prescribed by section 41 is received by the court which sent the decree for execution, it shall cause the necessary details as to the result of execution to be entered in its register of civil suits before the papers are transmitted to the record room

105 Every attachment of moveable property under rule 43, of Negotiable Instruments under rule 51, and of immoveable property under rule 54, shall be made through a Civil Court Amin, or Bailiff, unless special reasons render it necessary that any other agency should be employed, in which case those reasons shall be stated in the handwriting of the presiding Judge himself in the order for attachment

106 When the property which it is sought to bring to sale is immoveable property within the definition of the same contained in the law for the time being in force relating to the registration of documents, the decree-holder shall file with his application for an order for sale a certificate from the sub-registrar within whose sub-district such property is situated,

showing

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—*contd*

showing that the sub-registrar has searched his books Nos I and II and their indices for the twelve years preceding the mortgage or attachment as the case may be and stating the encumbrances, if any, which he has found on the property

107 Where an application is made for the sale of land or of any interest in land, the court shall before ordering sale thereof, call upon the parties to state whether such land is or is not ancestral land within the meaning of Notification No 1887/1—238-10, dated 7th October, 1911, of the Local Government, and shall fix a date for determining the said question

On the day so fixed, or on any date to which the enquiry may have been adjourned, the court may take such evidence, by affidavit or otherwise, as it may deem necessary, and may also call for a report from the Collector of the district as to whether such land or any portion thereof is ancestral land

After considering the evidence and the report, if any, the court shall determine whether such land, or any, and what part of it, is ancestral land

The result of the enquiry shall be noted in an order made for the purpose by the presiding Judge in his own handwriting

108 When the property which it is sought to bring to sale is revenue-paying or revenue-free land or any interest in such land, and the decree is not sent to the Collector for execution under section 68, the Court, before ordering sale, shall also call upon the Collector in whose district such property is situate to report whether the property is subject to any (and, if so, to what) outstanding claims on the part of Government

109 The certificate of the sub-registrar and the report of the Collector shall be open to the inspection of the parties or their pleaders free of charge, between the time of the receipt by the court and the declaration of the result of the enquiry

No fees are payable in respect of the report by the Collector

110 The result of the enquiry under rule 66 shall be noted in an order made for the purpose by the presiding Judge in his own handwriting The court may in its discretion adjourn the enquiry, provided that the reasons for the adjournment are stated in writing, and that no more adjournments are made than are necessary for the purposes of the enquiry

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XXI—contd

111 If after proclamation of the intended sale has been made any matter is brought to the notice of the court which it considers material for purchasers to know, the court shall cause the same to be notified to intending purchasers when the property is put up for sale

112 The costs of the proceedings under rules 66, 106 and 108 shall be paid in the first instance by the decree-holder, but they shall be charged as part of the costs of the execution, unless the court, for reasons to be specified in writing, shall consider that they shall either wholly or in part be omitted therefrom

113 Whenever any civil court has sold, in execution of a decree or other order, any house or other building situated within the limits of a military cantonment or station, it shall, as soon as the sale has been confirmed, forward to the commanding officer of such cantonment or station for his information and for record in the Brigade or other proper office, a written notice that such sale has taken place, and such notice shall contain full particulars of the property sold and of the name and address of the purchaser

114 Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act (Act No XI of 1878) are sold by public auction in execution of decrees by order of a civil court, the court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers, and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Indian Arms Act

115 When an application is made for the attachment of live-stock or other moveable property, the decree-holder shall pay into court in cash such sum as will cover the costs of the maintenance and custody of the property for fifteen days. If within three clear days before the expiry of any such period of fifteen days the amount of such costs for such further period as the court may direct be not paid into court, the court, on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid

116 Live-stock

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—*contd*

116 Live-stock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment-debtor on his furnishing security, or in that of some land-holder or other respectable person willing to undertake the responsibility of its custody and to produce it when required by the court

117 If the custody of live-stock cannot be provided for in the manner described in the last preceding rule, the animals attached shall be removed to the nearest pound established under the Cattle Trespass Act, 1871, and committed to the custody of the pound-keeper, who shall enter in a register—

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were committed to his custody,
- (c) the name of the attaching officer or his subordinate by whom they were committed to his custody, and shall give such attaching officer or subordinate a copy of the entry

118 For every animal committed to the custody of the pound-keeper as aforesaid, a charge shall be levied as rent for the use of the pound for each fifteen or part of fifteen days during which such custody continues, according to the scale prescribed under section 12 of Act No I of 1871

And the sums so levied shall be sent to the Treasury for credit to the municipal or district board, as the case may be, under whose jurisdiction the pound is. All such sums shall be applied in the same manner as fines levied under section 12 of the said Cattle Trespass Act

119 The pound-keeper shall take charge of, feed and water, animals attached and committed as aforesaid until they are withdrawn from his custody as hereinafter provided and he shall be entitled to be paid for their maintenance at such rates as may be, from time to time, prescribed under proper authority. Such rates shall, for animals specified in the section mentioned in the last preceding rule, not exceed the rates for the time being fixed under section 5 of the same Act. In any case, for special reasons to be recorded in writing the court may require payment to be made for maintenance at higher rates than those prescribed

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—*contd*

120 The charges herein authorized for the maintenance of live-stock shall be paid to the pound-keeper by the attaching officer for the first fifteen days at the time the animals are committed to his custody, and hereafter for such further period as the court may direct, at the commencement of such period. Payments for such maintenance so made in excess of the sum due for the number of days during which the animals may be in the custody of the pound-keeper shall be refunded by him to the attaching officer.

121 Animals attached and committed as aforesaid shall not be released from custody by the pound-keeper except on the written order of the court, or of the attaching officer, or of the officer appointed to conduct the sale, the person receiving the animals, on their being so released, shall sign a receipt for them in the register mentioned in rule 118.

122 For the safe custody of moveable property other than live-stock while under attachment, the attaching officer shall, subject to approval by the court, make such arrangements as may be most convenient and economical.

123 With the permission of the court the attaching officer may place one or more persons in special charge of such property.

124 The fee for the services of each such person shall be payable in the manner prescribed in rule 116. It shall not be less than four annas, and shall ordinarily not be more than six annas per diem. The court may, at its discretion, allow a higher fee, but if it do so, it shall state in writing its reasons for allowing an exceptional rate.

125 When the services of such person are no longer required the attaching officer shall give him a certificate on a counterfoil form of the number of days he has served and of the amount due to him, and on the presentation of such certificate to the court which ordered the attachment, the amount shall be paid to him in the presence of the presiding Judge.

Provided that, where the amount does not exceed Rs 5, it may be paid to the *Sahna* by money order on requisition by the *Amin* and the presentation of the certificate may be dispensed with.

*(Rules made by the High Court of Judicature at Allahabad
under Section 122)*

ORDER XXI—*contd*

126 When in consequence of an order of attachment being withdrawn or for some other reason, the person has not been employed or has remained in charge of the property for a shorter time than that for which payment has been made in respect of his services, the fee paid shall be refunded in whole or in part, as the case may be

127 Fees paid into court under the foregoing rules shall be entered in the Register of Petty Receipts and Repayments

128 When any sum levied under rule 119 is remitted to the treasury, it shall be accompanied by an order in triplicate (in the form given as Form 9 of the Municipal Account Code), of which one part will be forwarded by the Treasury officials to the district or municipal board, as the case may be. A note that the same has been paid into the Treasury as rent for the use of the pound, will be recorded on the extract from the pass-book

129 The cost of preparing attached property for sale, or of conveying it to the place where it is to be kept or sold, shall be payable by the decree-holder to the attaching officer. In the event of the decree-holder failing to provide the necessary funds, the attaching officer shall report his default to the court, and the court may thereupon issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid

130 Nothing in these rules shall be deemed to prevent the court from issuing and serving on the judgment-debtor simultaneously the notices required by Order XXI, rules 22, 66 and 107

Garnishee orders

131 The court may, in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument, or a debt recoverable only in a revenue court), or any moveable property not in the possession of the judgment-debtor, issue a notice to any person (hereinafter called the garnishee) liable to pay such debt, or to deliver or account for such moveable property, calling upon him to appear before the court and show cause why he should not pay

*(Rules made by the High Court of Judicature at Allahabad
under Section 122)*

ORDER XXI—*contd*

or deliver into court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the cost of execution

132 If the garnishee does not forthwith or within such time as the court may allow, pay or deliver into court the amount due from or the property deliverable by him to the judgment-debtor, or so much as may be sufficient to satisfy the decree and the cost of execution, and does not dispute his liability to pay such debt or deliver such moveable property, or if he does not appear in answer to the notice, then the court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him

133 If the garnishee disputes his liability the court, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as shall be just

134 Whenever in any proceedings under these rules it is alleged, or appears to the court to be probable that the debt or property attached or sought to be attached belongs to some third person or that any third person has a lien or charge upon, or an interest in it, the court may order such third person to appear and state the nature of his claim, if any, upon such debt or property and prove the same, if necessary

135 After hearing such third person, and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered, the court may pass such order as is herebefore provided or make such other order as it shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as to such court shall seem just and reasonable

136 Payment or delivery made by the garnishee whether in execution of an order under these rules or otherwise shall be a valid discharge to him as against the judgment-debtor, or any other person ordered to appear as aforesaid, for the amount paid, delivered or realized although such order or the judgment may be set aside or reversed

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXI—*concl'd*

Take notice that you are hereby required on or before the
 day of 19 to pay into this court the said sum of
 Rs
 Or

to deliver, or account to the *Amin* of this court for the moveable
 property detailed in the attached schedule, or otherwise to appear
 in person or by advocate, vakil or authorized agent in this court
 at 10-30 in the forenoon of the day aforesaid and show cause to
 the contrary, in default whereof an order for the payment of
 the said sum, or for the delivery of the said property may be
 passed against you

Dated this day of 19
Munsif
Subordinate Judge.

At ”

ORDER XXII

Rule 12

Add at the end—

“or to proceedings in the original Court taken after the
 passing of the preliminary decree where a final decree also re-
 quires to be passed having regard to the nature of the suit ”

ORDER XXV

Rule 1

*After the words in lines 6 and 7, “property in suit” insert
 the words “or that the plaintiff is being financed by a person not
 a party to the suit ”*

ORDER XXVI

Rule 18

*In clause (1) after the words “agents and pleaders” substi-
 tute a comma for the full stop, and add the following words —*

“and shall direct the party applying for the examination of
 the witness, or in its discretion any other party to the suit,
 to supply the Commissioner with a copy of the pleadings and
 issues ”

ORDER XXVII.

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XXVII

. Rule 9

Add the following new rule 9 —

"9 In every case in which the Government Pleader appears for the Government as a party on its own account, or for the Government as undertaking, under the provisions of rule 8 (1), the defence of a suit against an officer of the Government, he shall, in lieu of a *vakalatnama*, file a memorandum on unstamped paper signed by him and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the following form —

TITLE OF THE SUIT, ETC

I, A B, Government Pleader, appear on behalf of the Secretary of State for India in Council (or the Government of United Provinces, or as the case may be) respondent (or etc), in the suit —

or, on behalf of the Government [which, under Order 27, rule 8 (1) of Act No V of 1908, has undertaken the defence of the suit], respondent (or, etc), in the suit "

ORDER XXXII

Rule 3

Add the following proviso to rule 3 (4) —

"Provided that if the minor is under ten years of age no such notice shall be issued to him "

Rule 4

Substitute the following for rule 4 —

"4 (1) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as next friend, except by leave of the court

(2) Subject to the provisions of sub-rule (1) any person who is of sound mind and has attained majority may act as next friend of a minor, unless the interest of such person is adverse to that of the minor, or he is a defendant, or the court for other reasons to be recorded considers him unfit to act

(3) Every

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XXXII—*contd*

(3) Every next friend shall, except as otherwise provided by clause (5) of this rule, be entitled to be reimbursed from the estate of the minor any expenses incurred by him while acting for the minor

(4) The court may in its discretion, for reasons to be recorded, award costs of the suit, or compensation under section 35A or section 95 against the next friend personally as if he were a plaintiff

(5) Costs or compensation awarded under clause (4) shall not be recoverable by the guardian from the estate of the minor, unless the decree expressly directs that they shall be so recoverable "

Rule 4A

Add the following rule 4A —

"4A (1) Where a minor has a guardian appointed by competent authority, no person other than such guardian shall be appointed his guardian for the suit unless the court considers for reasons to be recorded, that it is for the minor's welfare that another person be appointed

(2) Where there is no such guardian or where the court considers that such guardian should not be appointed it shall appoint as guardian for the suit the natural guardian of the minor, if qualified, or where there is no such guardian the person in whose care the minor is, or any other suitable person who has notified the court of his willingness to act, or failing any such person, an officer of the court

Explanation—An officer of the court shall for the purpose of this sub-rule include a legal practitioner on the roll of the Court

(3) No person shall without his consent be appointed guardian for the suit, provided that in all cases the consent of such person shall be presumed, unless within fifteen days of receipt of notice from the court, he notifies to the court his refusal to accept appointment as such guardian. Refusal to accept notice shall be presumed to be refusal to act

(4) Where an officer of the court is appointed guardian for the suit under sub-rule (2), the court may direct that the costs to be incurred by such officer in the performance of his duties

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XXXII—concl'd

as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in court in which the minor is interested, and may give directions for the payment or allowance of such costs as justice and the circumstances of the case may require "

ORDER XXXIII

Rule 3

After the words "unless he is exempted from appearing in Court" add the words "or detained in prison"

Rule 5

(a) In clause (a), add the words "and the applicant, on being required by the court to make any amendment within a time to be fixed by the court, fails to do so" between the figure "3" and the word "or"

(b) Add the following explanation to rule 5 at the end.

"Explanation—An application shall not be rejected under clause (d) merely on the ground that the proposed suit appears to be barred by any law "

ORDER XXXIV

Rule 4 (2) *

After the words "the court may" insert the words "of its own motion, or"

ORDER XXXVII

Rule 1

Add the following clause (e) —

"(e) any court in the Province of Agra exercising the powers of a Small Cause Court "

ORDER XXXIX

*Rule 4 of Order XXXIV has since been substituted for by Act 21 of 1929 *supra*, p 233

*(Rules made by the High Court of Judicature at Allahabad
under Section 122)*

ORDER XXXIX

Rule 1

Delete the word "sale" after the words "damaging, alienation"

ORDER XLI

Rule 3 (1)

Substitute the following for sub-rule (1) of rule 3 —

"3 (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, or accompanied by the copies mentioned in rule 1 (1), it may be rejected, or where the memorandum of appeal is not drawn up in the manner prescribed, it may be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there "

Rule 10

In Rule 10—

- (i) Delete the second proviso to clause (1)*
- (ii) Delete clause (2)*
- (iii) Re-number clause (3) as clause (2)*

Rule 14

Add the following sub-rule (3) —

"(3) Notwithstanding anything in sub-rule (1) it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent, other than a person impleaded for

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XLI—*contd*

the first time in the appellate court, unless he has appeared and filed an address for service either in the trial court or in the case of a second appeal, in the lower appellate court, or has appeared in the appeal ”

Rule 23

In rule 23 for the words “Where the Court from whose decree an appeal is preferred has disposed of the suit on a preliminary point and the decree is reversed in appeal, the Appellate Court” substitute the words “Where an appellate court has reversed a decree and all questions arising in the case have not been decided, it”

Rule 27 (1)

(a) Insert the following as clause (b) —

“(b) the evidence sought to be adduced by a party to the appeal, which after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree or order under appeal was passed or made, or”

(b) Convert the existing clause “(b)” into clause “(c)”

Rule 31

At the end substitute a semi-colon for the fullstop and add the following —

Provided that where the presiding Judge pronounces his judgment by dictation to a shorthand writer in open court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge and shall bear the date of its pronouncement ”

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XLI—concl'd

Rule 37

(a) Delete the words "and shall be filed with the original proceedings in the suit" in lines 4 and 5 of the rule,

and

(b) Add a new paragraph as follows —

"Where the appellate court is the High Court the copies aforesaid shall be filed with the original proceedings in the suit "

Rule 38

Add the following new rule 38 —

"38 (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the court below, and notices and processes shall issue from the appellate court to such addresses

(3) Rules 21, 22, 23 and 24 of Order VII shall apply, so far as may be, to appellate proceedings "

ORDER XLII

Rule 1

1 The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees, subject to the following provision —

"It shall not be necessary for an appellant in a second appeal to produce a copy of the judgment of the court of first instance or any judgment other than the judgment on which the decree appealed against may be founded, and the record of the case shall be sent for at the expense of the appellant "

ORDER XLIII

(Rules made by the High Court of Judicature at Allahabad
under Section 122)

ORDER XLIII

Rule 1 (u)

(a) For the present rule 1(u), substitute the following —

“an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court,”

(b) Delete rule 3

ORDER XLIV

To rule 1 add another proviso as follows —

“Provided further that no application under this rule shall be allowed unless a notice of the application has been given to the proposed respondents ”

ORDER XLV

Rule 7

(a) In rule 7 (1) (a) between the words “the respondent” and the word “and” insert the following words —

“except when the Secretary of State for India in Council is the applicant ”

(b) In the first proviso to rule 7(1) for the words “at the time of granting the certificate” substitute the words “at any time before expiry of the period for furnishing security”

Rule 15 (1)

For rule 15 (1) substitute —

“15 (1) Whoever desires to obtain —

(a) execution of any order of His Majesty in Council, or,

(b) where an appeal has been dismissed by His Majesty in Council for want of prosecution, an order of the Court from which the appeal to His Majesty was preferred terminating proceedings and determining the costs,

shall apply to the said Court by a petition, accompanied by a certified copy of the decree passed or order made by His Majesty in Council of which execution is desired or to which effect is to be given and a memorandum of all costs incurred in India that are claimed in pursuance thereof ”

ORDER XLVI

(Rules made by the High Court of Judicature at Allahabad under Section 122)

ORDER XLVI

Rule 8

Add the following new rule 8 —

“8 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order ”

ORDER XLVII

Rule 10

Add the following new rule 10 —

“10 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order ”

ORDER XLVIII

Rule 1

Before the words “Every process issued” prefix the words “Except as provided in Order IV, rule 1 (2) ”

ORDER LII

Rule 1

“1 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under section 115 of the Code ”

APPENDIX B

Form No 7

*Form No 7—*an order for transmission of summons for service in the jurisdiction of another court (O 5, r 21) is hereby cancelled

Form No 10

Form No 10—a form to accompany return of summons of another court (O 5, r 23) is cancelled

Form No 20

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX B—concl'd

Form No 20

APPLICATION FOR ISSUE OF SUMMONS TO A PARTY OR WITNESS

No of suit

Names of parties

In the court of the

Date fixed for hearing

Form No 4

| 1 Number of witnesses to be summoned | 2 Name and full address of each person to be summoned | 3 Rank or occupation. | 4 Distance of residence from Court | | 5 Cash paid for— | | 6 Name and address of person to whom unexpended travelling expenses and diet money should be returned |
|-----------------------------------------|----------------------------------------------------------|--------------------------|---------------------------------------|------|---------------------|---------------|----------------------------------------------------------------------------------------------------------|
| | | | Rail | Road | Travelling expenses | Diet expenses | |
| | | | | | | | |

APPENDIX E

Form No 29

In Form No 29 (Proclamation of sale) delete the sentence "No bid by, * * * previously given" in the paragraph above "conditions of sale"

Form No 43

The security to be furnished under section 55 (4) shall be, as nearly as may be, by a bond in the following form —

In the Court of at

Suit No of 19

against

A B of

C D of

Plaintiff,
Defendant

WHEREAS-

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX E —concl'd

WHEREAS in execution of the decree in the suit aforesaid, the said C D has been arrested under a warrant and brought before the court of _____, and whereas the said C D has applied for his discharge on the ground that he undertakes within one month to apply under section 5 of Act No III of 1907, to be declared an insolvent, and the said court has ordered that the said C D shall be released from custody if the said C D furnish good and sufficient security in the sum of Rs _____ that he will appear when called upon, and that he will within one month from this date apply under section 5 of Act No III of 1907, to be declared an insolvent, Therefore, I, E F, inhabitant of _____, have voluntarily become security and do hereby bind myself, my heirs and executors to _____ as Judge of the said court and his successors in office that the said C D will appear at any time when called upon by the said court, and will apply in the manner and within the time hereinbefore set forth, and in default of such appearance or of such application, I bind myself, my heirs and executors, to pay to the said court on its order, the sum of Rs _____

Witness my hand at _____ this _____ day of _____ 19 .
(Sd) E F ,

Witnesses

Surety.

APPENDIX F

Form No 11

The security to be furnished under Order XXXVIII, rule 9, shall be, as nearly as may be, by a bond in the following form —

In the Court of _____ at _____
Suit No _____ of 19 _____

Plaintiff,
Defendant

Amount of suit, Rupees

WHEREAS

611

20 A

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX F—contd

WHEREAS in the suit above specified the plaintiff aforesaid, has applied to the said court that the said defendant, , may be called on to furnish sufficient security to fulfil any decree that may be passed against him in the said suit, or that on his failure so to do, certain property of the said defendant, may be attached,

And whereas, on the failure of the said defendant, , to furnish such security, or, show cause why it should not be furnished, the property aforesaid of the said defendant, , has been attached by order of the said court

Therefore I, , inhabitant of , have voluntarily become security and hereby bind myself, my heirs and executors, to as Judge of the said court, and his successors in office, that the said defendant, , shall produce and place at the disposal of the said court, when required, the property hereinbelow specified, namely (*here give description of property or refer to an annexed schedule*), or the value of the same, or such portion thereof as may be sufficient to fulfil such decree and shall when required pay the costs of the attachment, and in default of his so doing I bind myself, my heirs and executors, to pay to as Judge of the said court and his successors in office on its order, such sum to the extent of rupees (*here enter a sufficient sum to cover the amount of suit with costs and the costs of the attachment*) as the said court may adjudge against the said defendant

Witness my hand at this day of 19

(Signed)

Surety

Witnesses

Form No 12

The security to be furnished under Order XXXIX, rule 2 (2) shall be, as far as may be, by a bond in the following form —

In the Court of at
Sut No of 19

Plaintiff,
Defendant
WHEREAS

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX F—concl'd

WHEREAS, in the suit above specified, instituted by the said plaintiff, , to restrain the said defendant, , from (*here state the breach of contract or other injury*), the said court has, on the application of the said plaintiff, , granted an injunction to restrain the said defendant from the repetition (*or the continuance*) of the said breach of contract (*or wrongful act complained of*), and required security from the said defendant against such repetition (*or continuance*)

Therefore I, , inhabitant of , have voluntarily become security and do hereby bind myself, my heirs and executors, to as Judge of the said court and his successors in office that the said defendant, , shall abstain from the repetition (*or continuance*) of the breach of contract aforesaid (*or wrongful act, or from the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right*), and in default of his so abstaining, I bind myself, my heirs and executors to pay into court, on the order of the court, such sum to the extent of rupees , as the court shall adjudge against the said defendant

Witness my hand at this day of 19 .

(Signed)

Witnesses

Surety.

APPENDIX H

Form No 4

Notice to show cause (General Form)

In the Court of at District

Civil Suit No of 19

Miscellaneous No of 19 .

resident of

versus

resident of

To

WHEREAS the abovenamed
has made application to this court that
you are hereby warned to appear in this court in person or by a
pleader

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX H—contd

pleader duly instructed on the _____ day of _____ 19____, at _____ o'clock in the forenoon, to show cause against the application, failing whereon, the said application will be heard and determined *ex parte*, and it will be presumed that you consent to be appointed guardian for the suit

Given under my hand and the seal of the court, this _____ day of _____ 19____

Judge-

Form No 5

List of documents produced by plaintiff (O 13, r 1)
defendant

In the Court of _____ at _____ District
Suit No _____ of 19____

plaintiff-

versus

defendant

List of documents produced with the plant (or at first hearing) on behalf of plaintiff (or defendant)

This list was filed by _____ this _____ day of _____ 19____.

| 1 Serial number | 2 Description and date, if any, of the document | 3 What became of the document | | | 4 Remarks |
|--------------------|----------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| | | If brought on the record the exhibit mark put on the document | If rejected, date of return to party, and signature of party or pleader to whom the document was returned | If it remains on the record after decision of the case and is enclosed in an envelope, under rule 24, Chapter III, the date of enclosure in the envelope | |

Signature of party or pleader producing the list

Form No 11.

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX H—contd

Given under my hand and the seal of the Court, this day of 19

Judge "

Form No 16

The security to be furnished under Order XXV, rule 1, shall be, as nearly as may be, by bond in the following form —

In the Court of the at

Suit No of 19

Plaintiff,

Defendant.

WHEREAS a suit has been instituted in the said court by the said plaintiff to recover from the said defendant the sum of rupees and the said plaintiff is residing out of British India (or is a woman) and does not possess any sufficient immoveable property within British India independent of the property in the suit

Therefore, I inhabitant of , have voluntarily become security, and do hereby bind myself, my heirs and executors, to as Judge of the said court and to his successors in office that the said plaintiff , his heirs and executors, shall, whenever called on by the said court, pay all costs that may have been or may be incurred by the said defendant, , in the said suit, and in default of such payment I bind myself, my heirs and executors, to pay all such costs to the said court on its order

Witness my hand at this day of 19 .

(Signed)

Witnesses.

Surety.

Form No 17.

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX H—contd

Form No 17

Address for Service

Under Order VII, rules 19 to 26, Order VIII, rules 11 and 12, Order XLI, rule 38, Order XLVI, rule 8, Order XLVII, rule 10, Order LII, rule 1

In the Court of the _____ at _____ .

Original $\frac{\text{suit}}{\text{or case}}$ No _____ of 19 _____ .

Plaintiff,

versus

Defendant

This address shall be within the local limits of the district court within which the suit is filed, or of the district court within which the party ordinarily resides, if within the limits of the United Provinces of Agra and Oudh, but not within the limits of any other province —

| Name, parentage, and caste | Residence | Pargana or tahsil | Post Office | District |
|----------------------------|-----------|-------------------|-------------|----------|
| | | | | |

Dated _____

Any summons, notice, or process in the case may, henceforward, be issued to me at the above address until I file notice of change. If this address is changed I shall forthwith file a notice of change containing all the new particulars

Signature of party

{ Plaintiff
Defendant
Appellant
Respondent

Or

I file

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX H—contd

I file the above address according to the instructions given by my client, (name) (and capacity)

Signature of pleader

N B — This form when received by the Court must be stamped with the date of its receipt and filed with the record of the pending suit or matter

Form No 18

Notice of Change of Address for Service

Under Order VII, rules 19 to 26, Order VIII, rules 11 and 12, Order XLI, rule 38, Order XLVI, rule 8, Order XLVII, rule 10, Order LII, rule 1

In the Court of the at

Original ^{suit} No of 19
or case

Plaintiff,

versus

Defendant

This address shall be within the local limits of the district court within which the suit is filed, or of the district court within which the party ordinarily resides, if within the limits of the United Provinces of Agra and Oudh, but not within the limits of any other province —

| Name, parentage, and caste | Residence | Pargana or tahsil | Post Office | District |
|----------------------------|-----------|-------------------|-------------|----------|
| | | | | |

Dated

Any summons, notice, or process in the case may, henceforward, be issued to me at the above address until I file notice

(Rules made by the High Court of Judicature at Allahabad under Section 122)

APPENDIX H—concl'd

notice of change If this address is again changed I shall forthwith file a notice of change containing all the new particulars

Signature of party

{ Plaintiff
Defendant
Appellant
Respondent

Or

I file the above address according to the instructions given by my client, (name) (and capacity)

Signature of pleader

N B—This form when received by the Court must be stamped with the date of its receipt and filed with the record of the pending suit or matter

APPENDIX V

(Rules made by the High Court of Judicature at Patna under
Section 122)

APPENDIX V

RULES MADE BY THE HIGH COURT OF JUDICATURE
AT PATNA UNDER SECTION 122

 ORDER III

Rule 5B

Add the following new rule 5B —

“5B Notwithstanding anything contained in Order III, sub-rules (2) and (3) of rule 4 of the First Schedule of the Code of Civil Procedure, 1908, no pleader shall act for any person in the High Court, unless he has been appointed for the purpose in the manner prescribed by sub-rule (1) and the appointment has been filed in the High Court ”

 ORDER V

Rule 10

Add the following to rule 10 —

“Provided that in any case the Court may, of its own motion, or on the application of the plaintiff, send the summons to the defendant by post in addition to the mode of service laid down in this rule. An acknowledgment purporting to be signed by the defendant or an endorsement by postal servant that the defendant refused to take delivery may be deemed by the Court issuing the summons to be *prima facie* proof of service ”

 ORDER VII -

Rules 19 to 22

Add the following rules —

“19 Every plaint or original petition shall be accompanied by a statement giving an address at which service of notice, summons or other process may be made on the plaintiffs or petitioner, and every plaintiff or petitioner subsequently added shall, immediately on being so added, file a similar statement

(Rules made by the High Court of Judicature at Patna under
Section 122)

ORDER VII—*contd*

20 An address for service filed under the preceding rule shall state the following particulars —

- 1 the name of the street and number of the house (if in a town),
- 2 the name of the town or village,
- 3 the post office,
- 4 the district, and
- 5 the munsifi (if in Bihar and Orissa) or the District Court (if outside Bihar and Orissa)

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu*, or any party may apply for an order to that effect, and the Court may make such order as it thinks just

22 A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit "

 ORDER VIII
Rule 6

To rule 6 (1) should be added the words —

"and the provisions of Order VII, rules 14 to 18 shall, *mutatis mutandis*, apply to a defendant claiming set-off as if he were a plaintiff "

Rules 11 and 12

Add the following rules —

"11 Every party, whether original, added or substituted who appears in any suit or other proceedings shall at the time of entering appearance to the summons, notice or other process

served

(Rules made by the High Court of Judicatur at Patna under Section 122)

ORDER VIII—contd

served on him, file in Court a statement stating his address for service and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act *suo motu* or on the application of any party for an order to such effect and the Court may make such order as it thinks just

12 Rules 20 and 22 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule "

ORDER XII

Rule 6

Substitute the following for rule 6 —

"6 Where admissions of fact have been made either on the pleadings or otherwise, the Court may, at any stage of a suit, on the application of any party, or, of its own motion, without waiting for the determination of any other question between the parties, make such order or give such judgment, as it may think just "

ORDER XIII

Rule 1

In rule 1, after the words "at the first hearing of the suit" should be added the words —

"or, where issues are framed, on the day when issues are framed, or within such further time as the Court may permit "

Rule 9

Add the following as sub-rule (1A) in rule 9 —

"(1A) Where a document is produced by a person who is not a party in the proceeding, the Court may require the party on whose behalf the document is produced, to substitute a certified copy for the original as hereinbefore provided "

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XVI

Rule 2

Add the following proviso to rule 2 (1) —

“Provided that the Secretary of State shall not be required to pay any expenses into Court under this rule when he is the party applying for the summons, and the person to be summoned is an officer serving under the Government, who is summoned to give evidence of facts which have come to his knowledge, or of matters with which he has to deal, in his public capacity ”

Rule 3

Add the following proviso to rule 3 —

“Provided that when the person summoned is an officer of Government, who has been summoned to give evidence in a case to which Government is a party, of acts which have come to his knowledge, or of matters with which he has had to deal, in his public capacity, then—

- (i) if the officer's salary does not exceed Rs 10 a month, the Court shall at the time of the service of the summons make payment to him of his expenses as determined by rule 2 and recover the amount from the Treasury,
- (ii) if the officer's salary exceeds Rs 10 a month, and the Court is situated not more than 5 miles from his headquarters, the Court may, at its discretion, on his appearance, pay him the actual travelling expenses incurred,
- (iii) if the officer's salary exceeds Rs 10 a month and the Court is situated more than 5 miles from his headquarters no payment shall be made to him by the Court. In such cases any expenses paid into Court under rule 2 shall be credited to Government ”

Rule 8

Add the following to rule 8 —

“Provided that a summons under this Order may by leave of the Court be served by the party or his agent, applying for

the

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XVI—concl'd

the same, by personal service. If such service is not effected and the Court is satisfied that reasonable diligence has been used by the party or his agent to effect such service, then the summonses shall be served by the Court in the usual manner "

ORDER XXI

Rule 1

For rule 1, substitute the following —

"(i) All money payable under a decree or order shall be paid as follows, namely —

(a) by deposit in or by special postal money order to the Court whose duty it is to execute the decree or order,
or

(b) out of Court to the decree-holder, or

(c) otherwise as the Court which makes the decree or order shall direct

(ii) Where a judgment-debtor makes any payment under clause (a) of sub-rule (i), he may give notice thereof to the decree-holder—

(a) either through the Court, on payment of the fees laid down in the rules framed by the High Court under clause (i) of section 20 of the Court-fees Act, 1870,
or

(b) notwithstanding anything contained in Order XLVIII, rule 2, by registered post direct

Where interest is payable under the decree or order, such notice shall, if duly proved, operate as a bar to the accrual of such interest, upon the amount so paid, after the date of receipt of such notice by the decree-holder "

(Notification No 135-R, dated the 28th July, 1938)

Rule 2

Substitute the following for sub-rule (2) of rule 2 —

"(2) The judgment-debtor may also inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a date to be fixed by the

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDFR XXI—contd

Court, why such payment or adjustment should not be recorded as certified, and where certification has been made by an endorsement of such payment or adjustment by the decree-holder or by any person authorised by him in that behalf upon the process issued by the Court, the Court shall issue such notice of its own motion. If after service of the notice the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly."

Rule 6

Insert the following words after the word "decree" in clause (a) of rule 6 —

"and a copy of the suit register relating to the suit in which the decree was passed and a memorandum showing the costs allowed to the decree-holder subsequent to the passing of the decree"

Rule 11

(a) Add the following as sub-rule (1A) of rule 11 —

"(1A) Where an order has been made under section 39 for the transfer of a decree for the payment of money for execution to a Court within the local limits of the jurisdiction of which the judgment-debtor resides, such Court may, on the production by the decree-holder of a certified copy of the decree and an affidavit of non satisfaction, forthwith order immediate execution of the decree by the arrest of the judgment-debtor "

(b) Substitute the words and figures "sub-rules (1) and (1A)" for the word and figure "sub-rule (1)" in line 1 of sub-rule (2) of rule 11

Rule 16

In rule 16—

(1) Add the words "or to the Court to which the decree has been sent for execution, as the case may be" after the words "to the Court which passed it",

(2) delete

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—contd

(2) delete the words "and the judgment-debtor" from the first proviso, and in the said proviso after the word "transferor", insert the words "unless an affidavit of the transferor admitting the transfer is filed with the application," and substitute the word "his" for the word "their" and the word "objection" for the word "objections"

 Rule 17

In rule 17(1) substitute the following for the words "the Court may reject the application etc ' to the end of the sub-rule —

"the Court shall allow the defect to be remedied then and there or within a time to be fixed by it, and, if the decree-holder fails to remedy the defect within such time, the Court may reject the application "

 Rule 22

For sub-rule (1) of rule 22 substitute the following sub-rule —
 "Where an application for execution is made in writing under rule 11(2) the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him "

 Rule 26

In sub-rule (3) of rule 26 substitute the words "shall, unless sufficient cause is shown to the contrary" for the word "may"

 Rule 31

In sub-rules (2) and (3) of rule 31 for the words "six months" substitute "three months", and add the following as sub-rule (4) —

"(4) The Court may, for sufficient cause, extend the period of three months mentioned in sub-rules (2) and (3) to such period, not exceeding six months in the whole, as it may think fit "

 Rule 32

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—contd

Rule 32

In sub-rule (3) of rule 32 for the words "for one year" substitute the words "for three months or for such further periods, not exceeding one year in the whole, as may on sufficient cause shown, be fixed by the Court"

Rule 39

In sub-rule (5) of rule 39 delete the words "in the civil prison" in the first place where they occur
(Notification No 1-R, dated the 7th January, 1936)

Rules 43 and 43A

(a) *Substitute the following for rule 43 —*

"Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall be responsible for the due custody thereof

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once "

(b) *Insert the following as rule 43A —*

"(1) The attaching officer shall, in suitable cases, keep the attached property in the village or locality either—

- (a) in his own custody in any suitable place provided by the judgment-debtor, or in his absence by any adult member of his family who is present, on his own premises or elsewhere,
- (b) in the case of livestock, and provided the decree-holder furnishes the necessary funds, in the local pound, if a pound has been established in or near the village, in which case the pound-keeper will be responsible for

(Rules made by the High Court of Judicature at Patna under
Section 122)

ORDER XXI—contd

the property to the attaching officer, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description, or such less rate as may be agreed upon,

(c) in the custody of a respectable surety, provided the decree-holder furnishes the cost of maintenance and other costs, if any

(2) If in the opinion of the attaching officer the attached property cannot be kept in the village or locality, through lack of a suitable place, or satisfactory surety, or through failure of the decree-holder to provide necessary funds, or for any other reason, the attaching officer shall remove the property to the Court at the decree-holder's expense. In the event of the decree-holder failing to provide the necessary funds, the attachment shall be withdrawn

(3) Whenever attached property is kept in the village or locality as aforesaid, the officer shall forthwith report the fact to the Court, and shall with his report forward an accurate list of property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by rule 66

(4) If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the term prescribed in rule 68, the officer shall receive the same and forward it without delay to the Court for its orders

(5) When property is removed to the Court it shall be kept by the Nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept on the Court premises, or in the personal custody of the Nazir, he may, subject to approval by the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical, and the Court may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept

(6) When property remains in the village or locality where it is attached and any person other than the judgment-debtor shall claim the same, or any part of it, the attaching officer shall nevertheless, unless the decree-holder desires to withdraw the attachment

(Rules made by the High Court of Judicature at Patna under
Section 122)

ORDER XXI—*contd*

attachment of the property so claimed, maintain the attachment, and shall direct the claimant to prefer his claim to the Court

(7) (a) If the decree-holder shall withdraw an attachment or it shall be withdrawn under sub-rule (2) or sub-rule (9), the attaching officer shall inform the debtor, or in his absence, any adult member of his family, that the property is at his disposal

(b) In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the judgment-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure

(8) Whenever livestock is kept in the village or locality where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it under the supervision of the attaching officer, but the latter shall, if required by the decree-holder, and on his paying for the same at the rate to be fixed by the District Judge, and subject to the orders of the Court under whose orders the attachment is made, engage the services of as many persons as may be necessary, for the safe custody of it

(9) In the event of the judgment-debtor failing to feed the attached livestock in accordance with sub-rule (8), the officer shall call upon the decree-holder to pay forthwith for feeding the same. In the event of his failure to do so, the officer shall proceed as provided in sub-rule (2), and shall report the matter to the Court without delay

(10) When attached livestock is brought to Court, the Nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues

(11) If a pound has been established in or near the place where the Court is held, the Nazir shall be at liberty to place in it such attached livestock as can be properly there kept, in which case the pound-keeper will be responsible for the property to the Nazir and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description, or such less rate as may be agreed upon

(12) If

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—*contd*

(12) If there be no pound available, or if, in the opinion of the Court it be inconvenient to lodge the attached livestock in the pound, the Nazir may keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Court. The Nazir will in all cases remain responsible for the custody of the property.

(13) Each Court shall from time to time fix the rates to be allowed for the custody and maintenance of the various descriptions of livestock with reference to seasons and local circumstances. The District Judge may make any alteration he deems fit in the rates prescribed by Courts subordinate to him. Where there are two or more Courts in the same place, the rates shall be the same for each Court."

(Notification No 57, dated the 18th October, 1933)

Rule 45

Add to sub-rule (1) of rule 45 after deleting the full-stop at the end of the sub-rule —

"and the applicant shall pay into Court such sums as he may from time to time be required by the Court to pay in order to defray the cost of such arrangements"

Rule 50

In sub-rule (2) of rule 50 add the words "or to the Court to which it is sent for execution" after the words "passed the decree" and before the words "for leave"

Rule 53

Substitute the following for rule 53(1) (b) —

"53 (1) (b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court (or to the Court to which that decree may have been transferred for execution) of a notice by the Court before which the application has been made requesting such other Court (or the Court to which

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—*contd*

which the decree may have been transferred for execution as the case may be) to stay the execution of the decree sought to be attached unless and until—

- (i) the Court which has issued the notice shall cancel the same, or
- (ii) the holder of the decree sought to be executed, or his judgment-debtor, with the consent of the said decree-holder expressed in writing or the permission of the attaching Court, applies to such other Court (or to the Court to which the decree may have been transferred for execution) to execute the attached decree "

Rule 57

Delete the last sentence and add the following sub-paragraph to the rule —

"Upon every order dismissing an execution case in which there is an attachment, the attachment shall cease unless the Court otherwise directs "

(Notification No 1-R, dated the 7th January, 1936)

Rule 58

Substitute the following for rule 58 —

"58 (1) When any claim is preferred to any property, the subject-matter of execution proceedings, or any objection is made to the attachment thereof, on the ground that the applicant has an interest therein which is not bound under the decree, or that such property is not liable to attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed

(2) Where

(Rules made by the High Court of Judicature at Patna under Section 122).

ORDER XXI—contd

- (2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may in its discretion make an order postponing the delivery of the property after the sale pending the investigation of the claim or objection. And in no case shall the sale become absolute until the claim or objection has been decided "

Rule 59

Substitute the following for rule 59 —

- "59 The claimant or objector must adduce evidence to show that at the date of the decree or of the attachment, as the case may be, he had some interest in, or was possessed of, the property in question "

Rule 60

Substitute the following for rule 60 —

- "60 Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, at the date of the decree, or when attached, as the case may be, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession, of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from the execution proceedings, or from attachment

Where the property has been sold, such order shall have the effect of setting aside the sale, and if it has been purchased by a third party in good faith, the Court may make such order for his compensation by the decree-holder or objector, to an extent not exceeding 12½ per cent of the purchase price, as it thinks fit "

Rule 61

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—*contd*

Rule 61

Substitute the following for rule 61 —

“61 Where the Court is satisfied that the property was, at the time of the decree, or of the attachment, as the case may be, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim”

(Notification No 118-R, dated the 8th October, 1937)

Rules 63A to 63H

Add the following heading and rules below rule 63 —

Garnishee Orders

“63A Where a debt (other than a debt secured by a mortgage or a debt recoverable only in a Revenue Court or a debt the amount of which exceeds the pecuniary jurisdiction of the Court) has been attached under rule 46 and the debtor prohibited under clause (i) of sub-rule (1) of rule 46 (hereinafter called the garnishee) does not pay the amount of the debt into Court in accordance with rule 46, sub-rule (3), the Court on the application of the decree-holder may order a notice to issue calling upon the garnishee to appear before the Court and show cause why he should not pay into Court the debt due from him to the judgment-debtor. A copy of such notice shall, unless otherwise ordered by the Court, be served on the judgment-debtor

63B (1) If the garnishee does not pay into Court the amount of the debt due from him to the judgment-debtor, and if he does not appear in answer to the notice issued under rule 63-A, or does not dispute his liability to pay such debt to the judgment-debtor, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue against the garnishee as though such order were a decree against him

(2) If the garnishee appears in answer to the notice issued under rule 63A and disputes his liability to pay the debt attached, the Court, instead of making an order as aforesaid,

may

63B

(Rules made by the High Court of Judicature at Patna under
Section 122)

ORDER XXI—contd

may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and may proceed to determine such issue, and upon the determination of such issue shall pass such order upon the notice as shall be just

63C Whenever in any proceedings under the foregoing rules it is alleged by the garnishee that the debt attached belongs to some third person, or that any third person has a lien or charge upon or interest in it, the Court may order such third person to appear and state the nature and particulars of his claim, if any, upon such debt, and prove the same if necessary

63D After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing as ordered, the Court may pass such order as is provided in the foregoing rules, or make such other order as the Court shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as shall seem just and reasonable

63E Payment made by or levied by execution upon the garnishee in accordance with any order made under these rules shall be a valid discharge to him as against the judgment-debtor, and any other person ordered to appear under these rules, for the amount paid or levied, although such order or the judgment may be set aside or reversed

63F The costs of any application for the attachment of a debt or under the foregoing rules and of any proceeding arising from or incidental to such application, shall be in the discretion of the Court. Costs awarded to the decree-holder shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order and in priority to the amount of his decree

63G Out of the amount recovered under the garnishee order the Court shall deduct a sum equal to the court-fee payable under the Indian Court-fees Act on a plaint in a suit for recovery of the money and credit the same to the Government

63H (1) Where the liability of any garnishee has been tried and determined under these rules the order shall have the same force and be subject to the same conditions as to appeals or otherwise as if it were a decree

(2) Orders

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—contd

(2) Orders not covered by clause (1) shall be appealable as orders made in execution "

Rule 64

(a) For the words "attached by it" substitute the words "in respect of which it has made an order of attachment"

(b) Insert the words "which is" between the words "and" and "liable"

(Notification No 1-R, dated 7th January, 1936)

Rule 66

Omit the words "shall be drawn up after notice to the decree-holder and the judgment-debtor and" from sub-rule (2) of rule 65, and add the following proviso after sub-clause (e) of sub-rule (2) —

"Provided that no estimate of the value of the property, other than those, if any, made by the decree-holder and judgment-debtor respectively together with a statement that the Court does not vouch for the accuracy of either, shall be inserted in the sale-proclamation "

Rule 67

Add the following words at the end of sub-rule (1) of rule 67 after deleting the fullstop at the end of the sub-rule —

"and may, if the Court so directs, on the application of the decree-holder, be proclaimed and published simultaneously with the order of attachment "

Rule 69

In rule 69(2) for the word "seven" read "fourteen" and add the following proviso —

"Provided that the Court may dispense with the consent of any judgment-debtor who has not appeared in the proceedings "

Rule 72

In rule 72—

(i) Substitute the following for sub-rule (1) —

"(1) No holder of a decree in execution of which property is sold shall be precluded from bidding for or purchasing the property

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—contd

property unless an express order to that effect is made by the Court ”

(u) In sub-rule (2) for the words “with such permission” substitute the words “the property”

(u) Substitute the following for sub-rule (3) —

“(3) Where notwithstanding an order made under sub-rule (1) a decree-holder purchases the property by himself as through another person the Court shall, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale, and the cost of such application and order and any deficiency of price which may happen on the re-sale and all expenses attending it shall be in the discretion of the Court ”

Rule 75

Substitute the following for rule 75 —

“Where the property to be sold is a growing crop which can be sold to greater advantage in an unripe or unreaped state, it may be so'd unreaped, and the purchaser shall be entitled to enter on the land to do all that is necessary for the purpose of tending and reaping it. In all other cases the day of sale shall be so fixed as to admit of the crop ripening and being reaped before the sale ”

(Notification No 1R, dated 7th January, 1936)

Rule 85

For the portion of rule 85 beginning with the words “The full amount” and ending with the words “sale of the property ” substitute the following —

“The purchaser shall pay into Court the full amount of the purchase money and shall also tender the stamp necessary for the certificate referred to in rule 94 before the Court closes on the fifteenth day from the sale of the property ”

Rule 86

Insert the words “or tender of stamp” between the words “payment” and “within”

(Notification No 116-R, dated 2nd October, 1937)

Rule 89.

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—*contd*

Rule 89

In sub-rule (1) of rule 89 for the words "any person either owning such property or holding an interest therein by virtue of a title acquired before such sale," substitute the words "the judgment-debtor or any person deriving title through the judgment-debtor, or any person holding an interest in the property at the date of the application under this rule"

Rule 90

Substitute the following for the proviso to rule 90(1) —

"(i) Provided that no application to set aside a sale shall be admitted unless—

(a) it discloses a ground which could not have been put forward by the applicant before the sale was concluded, and

(b) the applicant deposits with his application such amount not exceeding 12½ per cent of the sum realised by the sale or such other security as the Court may in its discretion fix, unless the Court, for reasons to be recorded, dispenses with the deposit

(ii) Provided further that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud "

and add the following as sub-rule (2) —

"(2) In case the application is unsuccessful the costs of the opposite party shall be a first charge upon the deposit referred to in proviso (i) (b), if any "

Rule 92

In sub-rule (1) of rule 92 after the words "the Court shall" insert the words "subject to the provisions of rule 58(2)"

Rule 97

Add the following sub-rule to rule 97 —

"(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this rule "

Rule 99

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXI—*concl'd**Rule 99*

In rule 99 for the brackets and words “(other than the judgment-debtor)” substitute the brackets and words “(other than the persons mentioned in rules 95 and 98)”

(Notification No 1R, dated the 7th January, 1936)

Rule 104

Add the following rule —

“104 For the purpose of all proceedings under this Order service on any party shall be deemed to be sufficient if effected at the address for service referred to in Order VIII, rule 11, subject to the provisions of Order VII, rule 22, provided that this rule shall not apply to the notice prescribed by rule 22 of this Order ”

ORDER XXVI

Rule 14

Substitute the following for sub-rules (2) and (3) of rule 14 —

“(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if necessary) by metes and bounds. The Commissioner or Commissioners shall append to the report, or where there is more than one, to each report, a schedule showing the plots and areas allotted to each party and also, unless otherwise directed by the Court, a map showing in different colours the plots or portions of plots allotted to each party. In the event of a plot being sub-divided, the area of each sub-plot shall be given in the schedule, and also measurements showing how the plot is to be divided. Such report or reports with the schedule and the map, if any, shall be annexed to the commission and transmitted to the Court, and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same

(3) where

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXVI—*concl'd*

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied and, when drawing up the final decree shall incorporate in the decree the schedule, and the map, if any, mentioned in sub-rule (2) above, as confirmed or varied by the Court. The whole report or reports of the Commissioner or Commissioners shall not ordinarily be entered in the decree. Where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit."

(Notification No 8, dated the 4th March, 1932)

ORDER XXXII

Rule 4

In sub-rule (4) for the words "where there is no other person fit and willing to act as guardian for the suit," in the first sentence of the sub-rule, substitute the following —

"Where the person whom the Court, after hearing objections, if any, under sub-rule (4) of rule 3, proposes to appoint as guardian for the suit, fails, within the time fixed in a notice to him to express his consent to be so appointed."

ORDER XXXIV

Rule 2

In rule 2(2) insert the words "of its own motion or" after the words "the Court may"

(Notification No 1-R, dated the 7th January, 1936)

ORDER XXXIX

Rule 1

Substitute the word "the" for the word "a" in line 1 of clause (a) of rule 1 and add the following provisos after rule 1 —

"Provided that no such temporary injunction shall be granted if it would contravene the provisions of section 56 of the Specific Relief Act (Act I of 1877)

Provided

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XXXIX—concl'd

Provided further that an injunction to restrain a sale, or confirmation of a sale, or to restrain delivery of possession, shall not be granted except in a case where the applicant cannot lawfully prefer, and could not lawfully have preferred, a claim to the property or objection to the sale, or to the attachment preceding it, before the Court executing the decree'

(Notification No 118-R, dated the 8th October, 1937)

ORDER XLI

Rule 1

Add the following proviso to sub-rule (1) of rule 1 —

"Provided that when the decree appealed from is a final decree in a partition suit and embodies the allotment papers, the appellate court may accept a copy of the decree containing only a portion of the allotment papers, provided further that the appellate court may, subsequently, on the application of the respondent require a copy of the remaining or any further portion of the allotment papers to be filed by the appellant"

(Notification No 85-R, dated the 12th February, 1935)

Rule 14-A

Add the following as rule 14A —

"14A The Appellate Court may, in its discretion, dispense with the service of notice hereinbefore required on a respondent, or on the legal representative of a deceased respondent, in a case where such respondent did not appear, either at any stage of the proceedings in the Court whose decree is appealed from or in any proceedings subsequent to the decree of that Court and no relief is claimed against such opposite party or respondent or his legal representative either in the original case or appeal"

Rule 38

Add the following rule —

"38 (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 22, or Order VII, rule 12, shall hold good for all notices of appeals and all appellate proceedings arising out of the original suit or petition

(2) Every

(Rules made by the High Court of Judicature at Patna under Section 122)

ORDER XLI—concl'd

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses

(3) Rules 21 and 22 of Order VII shall apply, so far as may be, to appellate proceedings "

ORDER XLIII

Rule 1

Add the following to rule 1 as clause (ii) after clause (i) —

"(ii) an order in garnishee proceedings other than an order referred to in rule 63H(1) of Order XXI "

(Notification No 1-R, dated the 7th January, 1936)

APPENDIX D

Form No 1

Substitute the following for the schedule of costs of suits in the form of decree, No 1.—

| Plaintiff | Amount | Defendant | Amount |
|------------------------------------|--------|---------------------------------|--------|
| | RS A P | | RS A P |
| 1. Stamp for plaint | | Stamp for power | |
| 2. Stamp for power | | Stamp for petition or affidavit | |
| 3. Stamp for petition or affidavit | | Costs for exhibits | |
| 4. Costs for exhibits | | Pleader's fee | |
| 5. Pleader's fee on Rs | | Subsistence | |
| 6. Subsistence | | (a) for defendant or his agent | |
| (a) for plaintiff or his agent | | (b) for witnesses | |
| (b) for witnesses | | Commissioner's fee | |
| 7. Commissioner's fee | | Service of process | |
| 8. Service of process | | Copying or typing charge | |
| 9. Copying or typing charge | | | |
| Total | | Total | |

(Rules made by the High Court of Judicature at Patna under
Section 122)

APPENDIX E

Form No 38

Substitute the following form for Form No 38 —

“No 38

Certificate of Sale of Land (Order XXI Rule 94)
District

In the Court of _____ at _____
Execution Case No _____ of 19____
Decree-holder,
versus
Judgment-debtor

This is to certify that _____, son of _____, by caste _____, by occupation _____, resident of _____, Thana _____, District _____, has been declared the purchaser at a sale by public auction on the _____ day of _____ 19____, of the property specified below in execution of the decree in suit No _____ of this Court (1) and that the said sale has been duly confirmed by this Court

Given under my hand and the seal of the Court,
this _____ day (2) of _____ 19____

Judge.

Specification and price of properties (3) ”

APPENDIX G

Form No 9

In the schedule of costs in the form of Decree in Appeal, add “copying or typing charges” below the item “Pleader’s fee on Rs _____” in the columns for Appellant and Respondent, and number the new entry in the first column as “5”

APPENDIX H

(1) If the decree has been received by transfer from other court, enter the name of that court

(2) The date when the sale became absolute

(3) Particulars, sufficient to identify the property including the name of each registration sub district in which any part of the property is situated should be fully stated

(Rules made by the High Court of Judicature at Patna under Section 122)

APPENDIX H

Form No 7

Add the following "Note" at the foot —

"NOTE —The Commissioner has power under Chapter X of the Indian Evidence Act to control the examination of witnesses"

Form No 11

For Form No 11 substitute the following forms —

"No 11

Notice to minor defendant and guardian of application for appointment of the guardian to be guardian for the suit (O 32, r 3)

(Title)

To

Minor defendant

Guardian (appointed by authority, or natural, or the person in whose care the minor is, as the case may be)

Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of you* as guardian for the suit to the minor defendant, you the said minor and you*

are hereby required to take notice that unless within 21 days from the service upon you of this notice you*

give your consent to be appointed to act as guardian, the Court will proceed, subject to the decision of any objection that may be raised, to appoint an officer of the Court to act as guardian to you the minor for the said suit

Given under my hand and the seal of this Court, this

day of 19

Judge

Form No 11A

*Here insert name of guardian

(Rules made by the High Court of Judicature at Patna under Section 122

APPENDIX H—contd

Form No 11A

Notice to minor defendant and guardian of application for appointment of another person to be guardian for the suit (O 32, r 3)

To

Minor defendant

Guardian (appointed by authority or natural, or the person in whose care the minor is)

Whereas an application has been presented on the part of the plaintiff in the above suit for the appointment of¹

as guardian for the suit to the minor defendant, you the said minor and you² are hereby required to take notice that unless within 21 days from the service upon you of this notice you²

make an application for the appointment of yourself or of some friend of you the minor to act as guardian, the Court will proceed, subject to the decision of any objection that may be raised, to appoint¹

or an officer of the Court to act as guardian to you the minor for the said suit

Given under my hand and the seal of this Court, this

day of 19

Judge

Form No 11B-

¹ Here insert name of guardian upon whom the notice is to be served

² Here insert name and description of proposed guardian,

of 1908]

Civil Procedure

(Rules made by the High Court of Judicature at Patna under
Section 122)

APPENDIX H—*contd*

Form No 11B

Notice to the proposed guardian for the minor defendant,
when the person proposed is not the guardian appointed by
authority or the natural guardian or the person in whose care
the minor is

(Order XXXII, rule 4)

(Title)

District

In the Court of

at

Suit No

of 19

Plaintiff,

versus

Defendant

To

, Proposed Guardian

Whereas an application has been presented by the plaintiff
in the above case for the appointment of you*

as guardian for the suit to the minor defendant you are hereby
required to take notice that unless within days
from the service upon you of this notice you make an applica-
tion to the Court intimating your consent to act as guardian
for the suit, the Court will proceed to appoint some other
person to act as a guardian to the minor for the purposes of
the said suit

Given under my hand and the seal of this Court, this

day of

19

Judge

Form No 14.

*Here insert the name of the proposed guardian

(Rules made by the High Court of Judicature at Lahore under Section 122)

APPENDIX VI

RULES MADE BY THE HIGH COURT OF JUDICATURE
AT LAHORE UNDER SECTION 122

ORDER II

Rule 8

After rule 7 insert the following as rule 8 —

“8 (1) Where an objection, duly taken, has been allowed by the Court, the plaintiff shall be permitted to select the cause of action with which he will proceed, and shall, within a time to be fixed by the Court, amend the plaint by striking out the remaining causes of action

(2) When the plaintiff has selected the cause of action with which he will proceed the Court shall pass an order giving him time within which to submit amended plaints for the remaining causes of action and for making up the Court-fees that may be necessary. Should the plaintiff not comply with the Court's order, the Court shall proceed as provided in rule 18 of Order VI and as required by the provisions of the Court-fees Act”

(Chief Court Notification No 2212-G, dated 12th May, 1909)

ORDER V

Rule 7

The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he bases his defence or any claim for set-off and shall further order that where he relies on any other documents (whether in his possession or power or not) as evidence in support of his defence or claim for set-off, he shall enter such documents in a list to be added or annexed to the written statement

(High Court Notification No 213-R /XI-Y-17, dated the 24th July, 1936)

Rule 10

The following proviso was added —

“Provided that in any case if the plaintiff so wishes the Court may serve the summons in the first instance by registered

post

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER V—concl'd

post (acknowledgment due) instead of in the mode of service laid down in this rule "

(Chief Court Notification No 2212-G, dated 12th May, 1909, as amended by High Court Notification No 563-G, dated 24th November, 1927)

Rule 15

In rule 15, after the words "where in any suit the defendant cannot be found" the following words were inserted —
"or is absent from his residence "

(High Court Notification No 563-G, dated 24th November, 1927)

ORDER VII

Rule 2

In the second paragraph after the word "defendant" the following words were inserted —

"or for moveables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate," and after the word "amount" where it last occurs the words "or value" were inserted

(Chief Court Notification No 2212-G, dated 12th May, 1909)

Rule 17

Substitute the following for rule 17 —

"17 (1) Production of shop-book —(1) Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies

Original entry to be marked and returned —(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so, and return the book to the plaintiff and cause the copy to be filed

Explanation

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER VII—contd

Explanation—When a shop book or other account written in a language other than English or the language of the Court is produced with a translation or transliteration of the relevant entry, the party producing it shall not be required to present a separate affidavit as to the correctness of the translation or transliteration, but shall add a certificate on the document itself, that it is a full and true translation or transliteration of the original entry, and no examination or comparison by the ministerial officer shall be required except by a special order of the Court”

(High Court Notification No 88-Gaz /XI -Y -7, dated the 9th March, 1935)

Rules 19 to 25

Add the following new rules 19 to 25 —

19 Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. Plaintiffs or petitioners subsequently added shall, immediately on being so added, file a proceeding of this nature

20 An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides, if within the limits of the territorial jurisdiction of the High Court of Judicature at Lahore

21 Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court *suo motu* or any party may apply for an order to that effect, and the Court may make such order as it thinks just

22 Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present, a copy of the notice, summons or other process shall be affixed to the outer door of the house. If on the date fixed such party is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice, summons or other process had been personally served

23 Where a party engages a pleader, notices, summonses or other processes for service on him shall be served in the

manner

(rules made by the High Court of Judicature at Lahore under Section 122)

ORDER VII—concl'd

manner prescribed by Order III, rule 5, unless the Court directs service at the address for service given by the party

24 A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleader for such parties or be sent to them by registered post as the Court thinks fit

25 Nothing in these rules shall prevent the Court from directing the service of a notice, summons or other process in any other manner, if, for any reasons, it thinks fit to do so”
(High Court Notification No 567-G, dated 24th November, 1927)

ORDER VIII

Rule 1

The following was addēā —

and with such written statement shall produce in Court all documents in his possession or power on which he bases his defence or any claim for set-off

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his defence or claim for set-off he shall enter such documents in a list to be added or annexed to the written statement”

(High Court Notification No 563-G, dated 24th November, 1927)

Rules 11 and 12

Add the following as new rules 11 and 12

11 Every party, whether original, added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons notice or other process served on him as the date of hearing, file in Court a proceeding stating his address for service, and, if he fails to do so, he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act *suo motu* or on the application of any party for an order to such effect and the Court may make such order as it thinks just

12 Rules 20, 22, 23 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule”

(High Court Notification No 567-G, dated 24th November, 1927)

ORDER IX

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER IX

Rule 9

To sub-rule (1) the following proviso was added —

“Provided that the plaintiff shall not be precluded from bringing another suit for redemption of a mortgage, although a former suit may have been dismissed for default”

(Chief Court Notification No 2212-G, dated 12th May, 1909)

ORDER XIII

Rule 9

To sub-rule (1) the following further proviso was added —

“Provided further that the cost of such certified copy shall be recoverable as a fine from the party at whose instance the original document has been produced”

(High Court Notification No 563-G, dated 24th November, 1927)

ORDER XVI

Rule 1

Substitute the following for rule 1 —

“Summons to attend to give evidence or produce documents —At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents

Provided that no party who has begun to call his witness shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to produce any witness not named in a list, which must be filed in court on or before the date on which the hearing of evidence on his behalf commences and before the actual commencement of the hearing of such evidence, without an order of the Court made in writing and stating the reasons therefor”

(High Court Notification No 525-Gaz /XI -Y -11, dated the 15th October, 1932)

Rule 2

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XVI—contd

Rule 2

To sub-rule (1) the following "Exception" was added —

"Exception—When applying for a summons for any of its own officers, Government will be exempt from the operation of clause (1) "

(High Court Notification No 156-G , dated 9th January, 1919)

Rule 3

The following rule was substituted —

"3 (1) Tender of expenses to witness—The sum paid into a Court shall, except in the case of a Government servant, be tendered to the person summoned at the time of serving the summons if it can be served personally

(2) When the person summoned is a Government servant the sum so paid into Court shall be credited to Government

Exception (1)—In cases in which Government servants have to give evidence at a Court situate not more than five miles from their headquarters actual travelling expenses incurred by them may, when the Court considers it necessary, be paid to them

Exception (2)—A Government servant, whose salary does not exceed Rs 10 per mensem, may receive his expenses from the Court."

(High Court Notification No 156-G , dated 9th January, 1919)

Rule 4

In sub-rule (1) after the word "summoned" where it first occurs the following words were inserted —

"or, when such person is a Government servant, to be paid into Court "

(High Court Notification No 156-G , dated 9th January, 1919)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XVI—concl'd

Rule 16

Substitute the following for rule 16 —

When they may depart —(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison

(3) In the absence of the presiding officer the powers conferred by sub-rule (2) may be exercised by the Senior Subordinate Judge of the first class exercising jurisdiction at the headquarters of the district, or by any Judge or court official nominated by him for the purpose "

(High Court Notification No 209-R /XI-Y -11, dated the 25th July, 1938)

ORDER XVII

Rule 1

Substitute the following for rule 1 —

"Court may grant time and adjourn hearing —(1) Subject to the provisions of Order XXIII, rule 3, the Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded

(3) Where

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XVII—concl'd

(3) Where sufficient cause is not shown for the grant of an adjournment under sub-rule (1) the Court shall proceed with the suit forthwith "

(High Court Notifications No 95-G, dated 26th February, 1925 and No 211-R/XI-Y -22, dated 21st July, 1937)

ORDER XX

Rule 6

Substitute the following for rule 6 —

"(1) The decree shall agree with the judgment, it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit

(1-A)—In addition to the particulars mentioned in Clause (1), the decree shall contain the addresses of the plaintiff and the defendant as given in Order VII, rule 19, and Order VIII, rule 11, or as subsequently altered under Order VII, rule 24, and Order VIII, rule 12, respectively

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid

(3) the Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter "

(High Court Notification No 22-R /XI-Y -23, dated 10th February, 1937)

ORDER XXI

Rule 1

Substitute the following for rule 1 —

"(1) All money payable under a decree shall be paid as follows, namely—
Modes of paying money under a decree

(a) into the Court whose duty it is to execute the decree;

or

(b) out of Court to the decree-holder, or

(c) otherwise as the Court which made the decree directs

Explanation—The judgment debtor may, if he so desires, pay the decretal amount, or any part thereof, into the Court under clause (a) by postal money order on a form specially approved by the High Court for the purpose

— (2) Where-

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payments shall be given to the decree-holder "

(High Court Notification No 193-Gaz /XI-Y-14, dated the 11th of July, 1933)

Rule 5

Substitute the following for rule 5 —

"5 Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court or the Court of any Judge having jurisdiction in the place where the decree is to be executed to whom power to receive plants has been delegated by the District Judge of the district in which the decree is to be executed "

(High Court Notification No 72-R -XI-Y-14, dated the 23rd March 1933)

Rule 10

Substitute the following for rule 10 —

"10 Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof ^{Application for execution.}

Provided that if the judgment-debtor has left the jurisdiction of the Court which passed the decree, or of the Court to which the decree has been sent, the holder of the decree may apply to the Court within whose jurisdiction the judgment-debtor is, or to the officer appointed in this behalf, to order immediate execution on the production of the decree and of an affidavit of non-satisfaction by the holder of the decree pending the receipt of an order of transfer under section 39."

(High Court Notification No 125-Gaz /XI-Y-14, dated the 7th April, 1932)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

Rule 16

Substitute the following for rule 16 —

Application
for execution
by transferee
of decree

“16 Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the decree shall not be executed until the Court has heard his objections (if any) to its execution

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others ”

(High Court Notification No 125-Gaz /XI -Y -14, dated the 7th April, 1932)

Rule 17

Substitute the following for rule 17 —

Procedure on
receiving
application
for execution
of decree

“17 (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with, and, if they have not been complied with, the Court shall fix a time within which the defect shall be remedied, and if it is not remedied within such time, may reject the application

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented

(3) Every amendment made under this rule shall be signed or initialed by the Judge

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree "

(High Court Notification No 125—Gaz /XI-Y -14, dated the 7th April, 1932)

Rule 22

Substitute the following for rule 22 —

22 (1) Where an application for execution is made—

- (a) more than two years after the date of the decree, or
- (b) against the legal representative of a party to the decree,

Notice to show cause against execution in certain cases.

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice Failure to record such reasons shall be considered an irregularity not amounting to a defect in jurisdiction "

(High Court Notification No 125-Gaz /XI-Y -14, dated the 7th April, 1932)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

Rule 26

Substitute the following for rule 26 —

When Court
may stay
execution

' 26 (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application

Power to re-
quire securi-
ty from, or
impose con-
ditions upon,
judgment
debtor

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court shall, unless sufficient cause is shown to the contrary, require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit''

(High Court Notification No 125-Gaz /XI -Y-14, dated the 7th April, 1932)

Rules 31 and 32

Substitute the following for rules 31 and 32 —

Decree for
specific move-
able property

31 (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment debtor, or by the attachment of his property, or by both

(2) Where any attachment under sub-rule (1) has remained in force for three months, if the judgment-debtor has not

obeyed

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application

Provided that the Court may, in any special case, according to the special circumstances thereof, extend the period beyond three months, but it shall in no case exceed six months in all

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months or such other period as may have been prescribed by the Court from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease

32 (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced ^{Decree for specific performance, for restitution of conjugal rights, or for an injunction} ¹[in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention

(3) Where

¹ These words were inserted by s 2 of the Code of Civil Procedure (Amendment) Act, 1923 (XXIX of 1923)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—*contd*

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application

Provided that the Court may for sufficient reasons, on the application of the judgment-debtor, extend the period beyond three months, but it shall in no case exceed one year in all

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months or such other period as may have been prescribed by the Court from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree

Illustration

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution proceedings."

(High Court Notification No 125-Gaz /XI-Y -14, dated the 7th April, 1932)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

Rule 39

Substitute the following for rule 39 —

"39 (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court ^{Subsistence allowance.}

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor shall be deemed to be costs in the suit.

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed "

(High Court Notification No 125-Gaz /XI-Y -14, dated the 7th April, 1932)

 Rule 43

The rule was numbered as sub-rule (1) and the following further proviso and sub-rules (2) and (3) were added —

"and provided also that, when the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer

does

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—*contd*

does not act under the first proviso to this rule, he may at the instance of the judgment-debtor or of the decree-holder or of any person claiming to be interested in such property leave it in the village or place where it has been attached—

- (a) in the charge of the person at whose instance the property is retained in such village or place, if such person enters into a bond in the Form No 15A of Appendix E to this Schedule with one or more sufficient sureties for its production when called for, or
- (b) in the charge of an officer of the Court, if a suitable place for its safe custody be provided and the remuneration of the officer for a period of 15 days at such rate as may from time to time be fixed by the High Court be paid in advance, or
- (c) in the charge of a village *lambardar* or such other respectable person as will undertake to keep such property, subject to the orders of the Court, if such person enters into a bond in Form No 15B of Appendix E with one or more sureties for its production

(2) Whenever an attachment made under the provisions of this rule ceases for any of the reasons specified in rules 55, 57 or 60 of this Order, the Court may order the restitution of the attached property to the person in whose possession it was before attachment

(3) When property is made over to a custodian under sub-clause (a) or (c) of clause (1), the Schedule of property annexed to the Bond shall be drawn up by the attaching officer in triplicate, and dated and signed by

- (a) the custodian and his sureties,
- (b) the officer of the Court who made the attachment,
- (c) the person whose property is attached and made over,
- (d) two respectable witnesses

One copy will be transmitted to the Court by the attaching officer and placed on the record of the proceedings under which the attachment has been ordered, one copy will be made over to the person whose property is attached and one copy will be made over to the custodian "

(Rules made by the High Court of Judicature at Lahore under Section 122,)

ORDER XXI—contd

Rules 43A to 43D

Add the following new rules 43A to 43D —

“43A (1) Whenever attached property is kept in the village or place where it is attached, the attaching officer shall forthwith report the fact to the Court and shall with his report forward a list of the property seized

(2) If attached property is not sold under the first proviso to rule 43 or retained in the village or place where it is attached under the second proviso to that rule it shall be brought to the Court-house and delivered to the proper officer of the Court

(3) A custodian appointed under the second proviso to rule 43 may at any time terminate his responsibilities by giving notice to the Court of his desire to be relieved of his trust and delivering to the proper officer of the Court the property made over to him

(4) When any property is taken back from a custodian he shall be granted a receipt for the same

43B (1) Whenever attached property kept in the village or place where it is attached is live-stock, the person at whose instance it is retained shall provide for its maintenance and, if he fails to do so and if it is in charge of an officer of the Court, it shall be removed to the Court-house

Nothing in this rule shall prevent the judgment-debtor, or any person claiming to be interested in such stock from making such arrangements for feeding the same as may not be inconsistent with its safe custody

(2) The Court may direct that any sums which have been expended by the attaching officer or are payable to him, if not duly deposited or paid, be recovered from the proceeds of property, if sold or be paid by the person declared entitled to delivery before he receives the same. The court may also order that any sums deposited or paid under these rules be recovered as costs of the attachment from any party to the proceedings

43C When an application is made for the attachment of live-stock or other moveable property, the decree-holder shall pay into Court in cash such sum as will cover the costs of the maintenance and custody of the property for 15 days. If

within

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

within three clear days, before the expiry of any such period of 15 days the amount of such costs for such further period as the Court may direct be not paid into Court, the Court, on receiving a report thereof from the proper officer, may issue an order for the withdrawal of the attachment and direct by whom the costs of the attachment are to be paid

43D Any person who has undertaken to keep attached property under rule 43 (1) (c) shall be liable to be proceeded against as a surety under section 145 of the Code and shall be liable to pay in execution proceedings the value of any such property wilfully lost by him "

Rule 45

Substitute the following for rule 45 —

Provisions as
to agricultural
produce under
attachment

45 (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered and with every such application such charges as may be necessary for the custody of the crop up to the time at which it is likely to be fit to be cut or gathered shall be paid to the Court

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it, and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil

(4) Where

(Rules made by the High Court of Judicature at Lahore under
Section 122)

ORDER XXI—contd

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered "

(High Court Notification No 125-Gaz /XI-Y -14, dated the
7th April, 1932)

 Rule 53

Substitute the following for rule 53 —

"53 (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made—

Attachment
of decrees

(a) if the decrees were passed by the same Court, then by order of such Court, and

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court and to the Court to which it has been transferred for execution of a notice by the Court which passed the decree sought to be executed requesting such other Court to stay the execution of its decree unless and until—

(1) the Court which passed the decree sought to be executed cancels the notice, or

(2) the holder of the decree sought to be executed or with the consent of the said decree-holder expressed in writing or with the permission of the attaching Court, his judgment-debtor applies to the Court receiving such notice to execute the attached decree

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (2)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached prohibiting him from transferring or charging the same in any way, and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached, and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order with the knowledge thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force "

(High Court Notification No 125-Gaz /XI-Y-14, dated the 7th April 1932 and No 225-R /XI-Y-14, dated the 5th August, 1937)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

Rule 54

Substitute the following for rule 54 —

“54 (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge

Attachment of immoveable property.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate

(3) The order shall take effect, as against persons claiming under a gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier ”

(High Court Notification No 125-Gaz /XI -Y -14, dated the 7th April, 1932)

Rule 55

Substitute the following for rule 55 —

“55 (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit

Investigation of claims to, and objections to attachment of, attached property

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed, and that if an objection is not made within a reasonable time of the first attachment the objector shall have no further right to object to the attachment and sale

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

of the same property in execution of the same decree, unless he can prove a title acquired subsequent to the date of the first attachment

Postponement
of sale

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection "

(High Court Notification No 125-Gaz-XI-Y-14, dated the 7th April, 1932)

Rule 66

Substitute the following for rule 66 —

Proclamation
of sales by
Public auction

66 (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold,
- (b) the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government,
- (c) any incumbrance to which the property is liable,
- (d) the amount for the recovery of which the sale is ordered, and
- (e) every other thing, which the Court considers material for a purchaser to know in order to judge of the nature and value of the property, provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both of the parties

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the

manner

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—*contd*

manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto "

(High Court Notification No 567-Gaz, dated the 4th November, 1929)

Rule 68

Substitute the following for rule 68 —

"68 Save in the case of property of the kind described in ^{Time of sale-} the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least fifteen days in the case of immoveable property, and of at least one week in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale "

(High Court Notification No 125-Gaz /XI -Y -14, dated the 7th April, 1932)

Rule 69

Substitute the following for rule 69 —

' 69 (1) The Court may, in its discretion, adjourn any ^{Adjournment or stoppage of sale} sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment

Provided that, where the sale is made in or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it

(3) Every

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—contd

of the same property in execution of the same decree, unless he can prove a title acquired subsequent to the date of the first attachment

Postponement
of sale

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection "

(High Court Notification No 125-Gaz /XI-Y-14, dated the 7th April, 1932)

Rule 66

Substitute the following for rule 66 —

Proclamation
of sales by
Public auction

66 (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as farly and accurately as possible—

- (a) the property to be sold,
- (b) the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government,
- (c) any incumbrance to which the property is liable,
- (d) the amount for the recovery of which the sale is ordered, and
- (e) every other thing, which the Court considers material for a purchaser to know in order to judge of the nature and value of the property, provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both of the parties

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the

manner

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—*contd*

manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto "

(High Court Notification No 567-Gaz¹, dated the 4th November, 1929)

 Rule 68

Substitute the following for rule 68 —

"68 Save in the case of property of the kind described in ^{Time of sale.} the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least fifteen days in the case of immoveable property, and of at least one week in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale "

(High Court Notification No 125-Gaz /XI -Y -14, dated the 7th April, 1932)

 Rule 69

Substitute the following for rule 69 —

"69 (1) The Court may, in its discretion, adjourn any ^{Adjournment or stoppage of sale} sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment

Provided that, where the sale is made in or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it

(3) Every

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—*contd*

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale "

(High Court Notification No 125-Gaz /XI -Y -14, dated the 7th April, 1932)

Rule 75

In sub-rule (2) after the word "stored" the following words were inserted —

"or can be sold to great advantage in an unripe state "

(Chief Court Notification No 2212-G, dated 12th May, 1909, and High Court Notification No 129-R /XI -Y -14, dated the 28th April, 1938)

Rule 89

Substitute the following for rule 89 —

Application to
set aside sale
on deposit

89 (1) Where immoveable property has been sold in execution of a decree, any person claiming any interest in the property sold at the time of the sale or at the time of making the application under this rule or acting for or in the interest of such a person, may apply to have the sale set aside on his depositing in Court,—

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule

(3) Nothing

(Rules made by the High Court of Judicature at Lahore under Section 122) -

ORDER XXI—contd

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale "

(High Court Notification No 125-Gaz /XI-Y -14, dated the 7th April, 1932)

Rule 90

Substitute the following for rule 90 —

"90 (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it

Application to set aside sale on ground of irregularity or fraud

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud

Provided further that no such sale be set aside on any ground which the applicant could have put forward before the sale was conducted "

(High Court Notification No 125-Gaz /XI-Y -14, dated the 7th April, 1932)

Rule 98

Substitute the following for rule 98 —

'98 Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, or on his behalf it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days

Resistance or obstruction by judgment-debtor

Such detention shall be at the public expense and the person at whose instance the detention is ordered shall not be required to pay subsistence allowance "

(High Court Notification No 125-Gaz /XI-Y -14, dated the 7th April, 1932)

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXI—*concl'd**Rule 104*

Add the following new rule 104 —

104 For the purpose of all proceedings under this Order service on any party shall be deemed to be sufficient if effected at the address for service referred to in Order VIII rule 11, subject to the provisions of Order VII, rule 24, provided that this rule shall not apply to the notice prescribed by rule 22 of this Order "

(High Court Notification No 567-G, dated the 24th November, 1927)

ORDER XXIII

Rule 3

Substitute the following for rule 3 —

"Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit

Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purposes of deciding whether there has been any adjustment or satisfaction, unless the court for reasons to be recorded in writing, thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided

Provided further that when an application is made by all the parties to the suit, either in writing or in open court through their counsel, that they wish to compromise the suit, the court may fix a date on which the parties or their counsel should appear and the compromise be recorded, but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded no further adjournment shall be granted for this purpose, unless the court, for reasons to be

(Rules made by the High Court of Judicature at Lahore under
Section 122)

ORDER XXIII—*conold*

recorded in writing, considers it highly probable that the suit will be compromised on or before the date to which the court proposes to adjourn the hearing "

(High Court Notification No 211-R /XI -Y -22, dated the 21st July, 1937)

ORDER XXX

Rule 1

The following "Explanation" was added at the end —

"Explanation —This rule applies to a joint Hindu family trading partnership "

(Chief Court Notification No 2212-G , dated the 12th May, 1909)

ORDER XXXII

Rule 1

The following words were added —

"Such person may be ordered to pay any costs in the suit as if he were the plaintiff "

(Chief Court Notification No 2212-G , dated the 12th May, 1909)

Rule 3

The following sub-rules were substituted for sub-rules (3) and (4) —

"(3) The plaintiff shall file with his plant a list of relatives of the minor and other persons, with their addresses, who *prima facie* are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub-rule (2) above

(4) The Court may at any time after institution of the suit call upon the plaintiff to furnish such a list, and, in default of compliance, may reject the plant

(5) A person

673

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXXII—contd

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor, shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional court and any proceedings in the execution of a decree

(6) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that each person proposed is a fit person to be so appointed

(7) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule

Provided that the Court may, if it sees fit, issue notice to the minor also "

(High Court Notifications No 95-G, dated 25th February, 1925 and No 566-G, dated the 24th November, 1927)

Rule 4

Substitute the following for rule 4 —

(1) Any person who is of sound mind and has attained
 Who may act as next majority may act as next friend of a minor
 friend or be appointed guardian for the suit or as his guardian for the suit

Provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXXII—*concl'd*

for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be

(2) (A) Where a minor defendant has no guardian appointed or declared by competent authority, the Court may, subject to the proviso to sub-rule (1), appoint as his guardian for the suit a relative of the minor

If no person be available who is a relative of the minor the Court shall appoint one of the other defendants, if any, and failing such other defendant shall ordinarily proceed under sub-rule (4) of this Rule to appoint one of its officers or a pleader

(3) No person shall without his consent be appointed guardian for the suit, but the Court may presume such consent to have been given, unless it is expressly refused

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers or a pleader to be such guardian, and may direct that the costs to be incurred by such person in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require "

(High Court Notification No 566 G, dated the 24th November, 1927 as amended by High Court Notifications No 209-R / XI -Y -3, dated the 22nd July, 1936, and No 281-R / XI -Y -3, dated the 19th September, 1936)

ORDER XXXVII

Rule 1

The word "and" and new clause (e) were added —
"and

(e) the Courts of the District Judge and Subordinate Judges of the First Class of the Delhi Province and the Courts of

the

675

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XXXVII—concl'd

the District Judges and Subordinate Judges of the first class in the civil districts of Lahore and Amritsar in the province of the Punjab "

(High Court Notifications No 225 G , dated the 5th July, 1923 and No 456-Gaz /XI -Y -5, dated the 29th July, 1932)

Rule 3

The following sub-rule was added —

“(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1) ”

(High Court Notification No 577-G , dated the 15th November, 1928)

ORDER XLI

Rule 1

Substitute the following for rule 1 —

| | |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Form of appeal</p> <p>What to accompany memorandum</p> | <p>“1 (1) —Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded</p> |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Provided that when two or more cases are tried together and decided by the same judgment, and two or more appeals are filed against the decrees, whether by the same or different appellants, the officer appointed in this behalf may, if satisfied that the questions for decision are analogous in each appeal, dispense with the production of more than one copy of the judgment

| | |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Contents of memorandum</p> | <p>(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively ”</p> |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

(High Court Notification No 631-Gaz -XI-Y -1, dated the 7th December, 1932)

(Rules made by the High Court of Judicature at Lahore under
Section 122)

ORDER XLI—contd

Rule 23-A

Insert the following new rule 23-A —

“23-A Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point and the decree is reversed in appeal, and a retrial is considered necessary, the appellate Court shall have the same powers as it has under rule 23 ”

(High Court Notification No 216-R /XI-Y -1/XI-Y -25, dated
the 4th August, 1938)

 Rule 35

The following further proviso was added —

“Provided also in the case of the High Court that the Registrar, or such other officer as may be in charge of the Judicial Department from time to time, shall sign the decree on behalf of the Judge or Judges who passed it, but that such Registrar, or such officer, shall not sign such decree on behalf of a dissenting Judge ”

(High Court Notification No 20-R /XI-Y -1, dated the 29th
January, 1937)

 Rule 38

Add the following new rule 38 —

(1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition

(2) The notice of appeal, and other processes connected with proceedings therein, shall issue to the addresses mentioned in clause (1) above, and service effected at such addresses shall be as effective as if it had been made personally on the appellant or respondent, as the case may be ”

(High Court Notification No 20-R /XI-Y -1, dated the 29th
January, 1937)

(3) Rules

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XLI—concl'd

(3) Rules 21, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to appellate proceedings

(High Court Notifications No 567-G, dated the 24th November, 1927, and No 20-R /XI-Y -1, dated the 20th January, 1937)

ORDER XLII

Rule 2 (new)

Add the following as rule 2 —

“2 In addition to the copies specified in Order XLI, rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the Appellate Court dispenses therewith ”

(High Court Notifications No 4685-G, dated the 17th October, 1919, and No 138-G, dated the 19th March, 1926)

ORDER XLIII

Rule 1

The following was inserted as rule 1 —

Appeals from
orders

“1 An appeal shall lie from the following orders under the provisions of section 104, namely —

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court,
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party,
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*,
- (e) an order under rule 4 of Order X pronouncing judgment against a party,
- (f) an order under rule 21 of Order XI,
- (g) an order under rule 10 of Order XVI for the attachment of property,

(h) an

(Rules made by the High Court of Judicature at Lahore under Section 122)

ORDER XLIII—concl'd

- (h) an order under rule 20 of Order XVI pronouncing judgment against a party,
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement,
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale,
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit,
- (l) an order under rule 10 of Order XXII giving or refusing to give leave,
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction,
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit,
- (o) an order ¹[under rule 2, rule 4 or rule 7] of Order XXXIV refusing to extend the time for the payment of mortgage-money,
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV,
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII,
- (r) an order under rule 1, rule 2, rule 4, or rule 10 of Order XXXIX
- (s) an order under rule 1 or rule 4 of Order XL
- (t) an order of refusal under rule 19 of Order XLI to re-admit or under rule 21 of Order XLI to rehear an appeal;
- (u) an order under rule 23 or rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court,
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV,
- (w) an order under rule 4 of Order XLVII granting an application for review "

(High Court Notification No 216-R /XI -YI/XI-Y -25, dated the 4th August, 1938)

APPENDIX B

¹These words and figures were substituted by s 2 of the Transfer of Property (Amendment) Supplementary Act, 1930 (16 of 1930)

(Rules made by the High Court of Judicature at Lahore under Section 122)

APPENDIX B

Form No 11

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE (O 5, r 18)

(Title)

The affidavit of I, son of, make oath affirm and say as follows —

(1) I am process-server of this Court

(2) On the day of 19, I received a summons/notice issued by the Court of in suit No of 19 in the said Court, dated the day of 19, for service on

(3) The said was at the time personally known to me, and I served the said summons/notice on him/her on the day of at about o'clock on the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice, —

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

Or,

(3) The said not being personally known to me accompanied to and pointed out to me a person whom he stated to be the said

, and I served the said summons/notice on him/her on the day of

of 1908]

Civil Procedure

(Rules made by the High Court of Judicature at Lahore under Section 122)

APPENDIX B—contd

19 , at about noon at o'clock in the by tendering a copy thereof to him/her and requiring his/her signature to the original summon/notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence

(b) Signature of process server

Or,

(3) The said and his house in which he ordinarily resides being personally known to me pointed out to me by I went to the said house in and there on the day of 19 , at o'clock in the fore/after noon I did not find the said I enquired

{ (a) } neighbours
{ (b) }

I was told that had gone to and would not be back till

Signature of process-server

Or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service

Sworn/Affirmed by the said before me this day of 19

Empowered under section 139 of the Code of Civil Procedure to administer the oath to deponents

(Chief Court Notification No 2212-G, dated the 12th May, 1909)

APPENDIX E

(Rules made by the High Court of Judicature at Lahore under Section 122)

APPENDIX E

Form No 15A

BOND FOR SAFE CUSTODY OF MOVEABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF PERSON INTERESTED AND SURETIES

(O XXI, r 43)

In the Court of at
Civil suit No of

A B of

against

C D of

Know all men by these presents that we, I J of , etc , and K L of , etc , and M N of , etc , are jointly and severally bound to the Judge of the Court of in Rupees to be paid to the said Judge, for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents

Dated this day of 19

And whereas the moveable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court, dated the day of 19 , in execution of a decree in favour of in suit No of 19 , on the file of and the said property has been left in the charge of the said I J

(Rules made by the High Court of Judicature at Lahore under Section 122)

APPENDIX E—contd

Now the condition of this obligation is that, if the above bounden I J shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void otherwise it shall remain in full force

I J

K L

M N

Signed and delivered by the above bounden in the presence of

Form No 15B

BOND FOR SAFE CUSTODY OF MOVEABLE PROPERTY ATTACHED AND LEFT IN CHARGE OF ANY PERSON AND SURETIES

[O XXI, r 43 (1) (c)]

In the Court of at
Civil suit No of

A B of

against

C D of

Know all men by these presents that we, I J of , etc , and K L of , etc , and M N of , etc , are jointly and severally bound to the Judge of the Court of in Rupees to be paid to the said Judge for which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents

Dated this day of 19

And whereas the moveable property specified in the schedule hereunto annexed has been attached under a warrant from the said Court dated the day of 19 , in execution of a decree in favour of

(Rules made by the High Court of Judicature at Lahore under Section 122)

APPENDIX E—concl'd

in suit No _____ of _____ 19 _____, on the file of _____ and the said property has been left in the charge of the said I J

Now the condition of this obligation is that, if the above bounden I J shall duly account for and produce when required before the said Court all and every the property aforesaid and shall obey any further order of the Court in respect thereof, then this obligation shall be void otherwise it shall remain in full force and be enforceable against the above bounden I J in accordance with the procedure laid down in section 145, Civil Procedure Code, as if the aforesaid I J were a surety for the restoration of property taken in execution of a decree

I J

K L

M N

Signed and delivered by the above bounden in the presence of

(High Court Notification No 606-G, dated the 13th December, 1928)

APPENDIX VII

(Rules made by the High Court of Judicature at Nagpur under
Section 122)

APPENDIX VII

RULES MADE BY THE COURT OF THE JUDICIAL COM-
MISSIONER, CENTRAL PROVINCES AND BY THE
HIGH COURT OF JUDICATURE AT NAGPUR,
UNDER SECTIONS 125 AND 122 RESPECTIVELY,
OF THE CODE OF CIVIL PROCEDURE, 1908

ORDER III

Rule 5

Substitute the words "on a pleader who has been appointed
to act for any party" for the words "on the pleader of any
party "

(Notifications Nos 7390 and 7391, dated the 19th September,
1929)

ORDER IV

Rule 1

(a) Substitute the following for rule 1 (1)

"1 (1) Every suit shall be instituted by presenting to the
Court or such officer as it appoints in this behalf a plaint, to-
gether with as many true copies on plain paper of the plaint as
there are defendants, for service with the summons upon each
defendant, unless the Court, for good cause shown, allows time
for filing such copies "

(b) Add the following as sub-rule (2) to rule 1 and renumber
the present sub-rule (2) as sub-rule (3) —

"(2) The Court fee chargeable for such service shall be paid,
in the case of suits when the plaint is filed, and in the case of
all other proceedings when the process is applied for "

(Notifications Nos 7390 and 7391, dated the 19th September,
1929)

ORDER V

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER V

Rule 15

Substitute the words "When the defendant is absent or cannot be personally served" for the words "Where in any suit the defendant cannot be found"

(Notifications Nos 7390 and 7391, dated the 19th September, 1929)

Rule 17

The following proviso shall be inserted, namely —

"Provided that where a special service has been issued and the defendant refuses to sign the acknowledgment it shall not be necessary to affix a copy as directed hereinbefore"

(Notifications Nos 5487 and 5488, dated the 3rd August 1932)

Rule 21-A

After rule 21, the following shall be inserted as rule 21-A, namely —

"21-A The Court may, notwithstanding anything in the foregoing rules, cause the summons of its own Court or of any other Court in British India to be addressed to the defendant at the place where he ordinarily resides or carries on business and sent to him by registered post prepaid for acknowledgment provided that such place is a town or village in the Akola revenue taluq. An acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be *prima facie* proof of service"

(Notifications Nos 6634 and 6635, dated the 23rd September, 1932)

Rule 25

In rule 25 substitute "may" for "shall"

(Notifications Nos 7390 and 7391 dated the 19th September, 1929)

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER V —concl'd

Rule 25-A

Add the following as rule 25-A —

“25-A Where the defendant resides in British India but outside the limits of the Central Provinces, the Court may, in addition to any other mode of service, send the summons by registered post to the defendant at the place where he is residing or carrying on business An acknowledgment purporting to be signed by him, or an endorsement by a postal servant that the defendant refused service may be deemed by the Court issuing the summons to be *prima facie* proof of service ”

Service where defendant resides in British India but outside the Central Provinces

(Notifications Nos 7390 and 7391, dated the 19th September, 1929)

Rule 26

Insert the words “in addition to or in substitution for the method permitted by the rule 25” between the words “may” and “be sent”

(Notifications Nos 7390 and 7391, dated the 19th September, 1929)

ORDER VII

Rule 9

Substitute the following for rule 9 —

“9 (1) The plaintiff shall endorse on the plaint or annex thereto a list of the documents (if any) which he has produced along with it

(2) The chief ministerial officer of the Court shall sign such lists and the copies of the plaint presented under rule 1, of Order IV, if, on examination, he finds them to be correct ”

(Notifications Nos 7390 and 7391, dated the 19th September, 1929)

Rules 19 to 23

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER VII—contd

Rules 19 to 23

Add the following as rules 19 to 23 —

Registered
address

19 Every plaint or original petition shall be accompanied by a memorandum giving an address at which service of process may be made on the plaintiff or petitioner. The address shall be within the local limits of the Civil District in which the plaint or original petition is filed or, if an address within such Civil District cannot conveniently be given, within the local limits of the Civil District in which the party ordinarily resides. This address shall be called the "registered address" and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.

Registered
address by a
party subse-
quently added
as plaintiff or
petitioner

20 Any party subsequently added as plaintiff or petitioner shall in like manner file a registered address at the time of applying or consenting to be joined as plaintiff or petitioner.

Consequence of
non-filing of
registered
address

21 (1) If the plaintiff or the petitioner fails to file a registered address as required by rule 19 or 20, he shall be liable, at the discretion of the Court, to have his suit dismissed or his petition rejected.

An order under this rule may be passed by the Court *suo motu* or on the application of any party.

(2) Where a suit is dismissed or a petition rejected under sub-rule (1) the plaintiff or the petitioner may apply for an order to set the dismissal or the rejection aside and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the registered address at the proper time, the Court shall set aside the dismissal or the rejection upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or petition.

Affixing of
process and its
validity

22 Where the plaintiff or the petitioner is not found at his registered address and no agent or adult male member of his family on whom a process can be served is present, a copy of the process shall be affixed to the outer door of the house and such service shall be deemed to be as effectual as if the process had been personally served.

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER VII—*concl'd*

23 A plaintiff or petitioner who wishes to change his registered address shall file a verified petition and the Court shall direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit or proceedings as the Court may deem it necessary to inform.”

(Notifications Nos 7390 and 7391, dated the 19th September 1929 and No 1483, dated the 23rd February, 1939)

ORDER VIII

Rules 11 to 13

Add the following as Rules 11 to 13 —

“11 Every defendant in a suit or opposite party in any proceedings, shall, on the first day of his appearance in Court, file a memorandum giving an address for service on him of any subsequent process. The address shall be within the local limits of the Civil District in which the suit or petition is filed or, if an address within the limits of such Civil District cannot conveniently be given, within the local limits of the Civil District in which the party ordinarily resides. This address shall be called the “registered address” and it shall hold good throughout interlocutory proceedings and appeals and also for a further period of two years from the date of final decision and for all purposes including those of execution.

12 (1) If the defendant or the opposite party fails to file a registered address as required by rule 11 he shall be liable, at the discretion of the Court, to have his defence struck out and to be placed in the same position as if he had made no defence.

An order under this rule may be passed by the Court *suo motu* or on the application of any party.

(2) Where the Court has struck out the defence under sub-rule (1) and has adjourned the hearing of the suit or the proceeding and where the defendant or the opposite party at or before such hearing, appears and assigns sufficient cause for his failure to file the registered address he may upon such terms as the Court directs as to costs or otherwise be heard in answer to the suit or the proceeding as if the defence had not been struck out.

(3) Where

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER VIII—concl'd

(3) Where the Court has struck out the defence under sub-rule (1) and has consequently passed a decree or order, the defendant or the opposite party, as the case may be, may apply to the Court by which the decree or order was passed for an order to set aside the decree or order, and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order as against him upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or proceeding

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant or opposite party only it may set aside as against all or any of the other defendants or opposite parties

13 Rules 20, 22 and 23 of Order VII shall apply, so far as may be, to addresses for service filed under rule 11 "

(Notifications Nos 7390 and 7391, dated the 19th September, 1929 and No 1483, dated the 23rd February, 1939)

 ORDER IX

Rule 13

(a) *Add the following as an additional proviso to rule 13 —*

"Provided also that no such decree shall be set aside merely on the ground of irregularity in service of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim

Explanation —Where a summons has been served under Order V, rule 15, on an adult male member having an interest adverse to that of the defendant in the subject-matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule "

(b) *For*

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER IX—concl'd

(b) For the words "he was prevented by any sufficient cause from appearing" the words "there was sufficient cause for his failure to appear" shall be substituted

(c) Existing rule 13 shall be re-numbered as sub-rule (1), and

(d) after sub-rule (1) so re-numbered the following shall be inserted as sub-rule (2), namely —

"(2) The provisions of section 5 of the Indian Limitation Act, IX of 1908, shall apply to applications under sub-rule (1) "

(Notifications Nos 7390 and 7391, dated the 19th September, 1929, Notifications Nos 5487 and 5488, dated the 3rd August, 1932 and Notifications Nos 8346 and 8347, dated the 17th December, 1932)

ORDER XIII

Rule 9

Insert the following as sub-rule (2) and re-number the present sub-rule (2) as sub-rule (3) —

"(2) Where the document has been produced by a person who is not a party to the suit, the Court may and, at the request of the person applying for the return of the document, shall order the party at whose instance the document was produced to pay the cost of preparing the certified copy "

(Notifications Nos 6532 and 6533, dated the 21st August, 1929)

ORDER XVI

Rule (2) 1

Add the following as an exception to rule 2 (1) —

"Exception —When applying for a summons for any of its own officers, Government will be exempt from the operation of sub-rule (1) "

(Notification No 163-143-D -V, dated the 9th May 1919)

(For Central Provinces only)

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XVI—concl'd

Rule 3

For rule 3 substitute the following —

3 (1) The sum so paid into Court shall, except in case of a Government servant, be tendered to the person summoned, at the time of serving the summons, if it can be served personally "

(2) When the person summoned is a Government servant the sum so paid into Court shall be credited to Government

Exception (1)—In cases in which Government servants have to give evidence at a Court situate not more than 5 miles from their headquarters, the actual travelling expenses incurred by them, may, when the Court considers it necessary, be paid to them

Exception (2).—A Government servant whose salary does not exceed Rs 10 per mensem may receive his expenses from the Court "

(Notification No 163-143-D-V, dated the 9th May, 1919)

(For Central Provinces only)

Rule 4

After the word "summoned" where it first occurs in rule 4 (1) insert—

"or, when such person is a Government servant, to be paid into Court"

(Notification No 163-143-D-V, dated the 9th May 1919)

(For Central Provinces only)

ORDER XVIII

Rule 2

Add the following as sub-rule (4) to rule (2) —

(4) Notwithstanding anything contained in this rule the Court may order that the production of evidence or the address to the Court may be in any order which it may deem fit "

(Notifications Nos 6532 and 6533, dated the 21st August, 1929)

ORDER XX

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XX

Rule 11

In sub-rule (2) for the words "and with the consent of the decree-holder" the words "and after notice to the decree-holder" shall be substituted

(Notifications Nos 1033 and 1034, dated the 3rd February, 1931)

ORDER XXI

Rule 1

(a) In sub-rule (1) after the words "a decree" insert the words "or an order",

(b) for clause (a) of sub-rule (1) substitute the following clause —

"(a) by deposit in, or by postal money-order to, the Court whose duty it is to execute the decree or order, or",

(c) in clause (c) of sub-rule (1), after the word "decree" insert the words "or order", and

(d) to sub-rule (2), add the following proviso —

"Provided that when the payment is made by money-order the notice may be given by registered post by the judgment-debtor direct to the decree-holder"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 11

After sub-clause (v) of clause (1) of sub-rule (2), insert the following proviso —

"Provided that, when the applicant files with his application a certified copy of the decree the particulars specified in clauses (b), (c) and (h) need not be given in the application"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 16

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—contd

Rule 16

After the words, "which passed it" insert the words "or to any Court to which it has been sent for execution"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 17

In sub-rule (1), for the words "and if they have not been complied with . . . within a time to be fixed by it" substitute the words "and, if they have not been complied with, the Court may allow the defect to be remedied then and there, or may fix a time within which it should be remedied and, in case the decree-holder fails to remedy the defect within such time, the Court may reject the application"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 22

(a) For the words "one year", wherever they occur, substitute the words "three years"

(b) To sub-rule (2) add the following proviso —

"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained substantial injury by reason of such omission"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 24

In sub-rule (3), for the word "executed" substitute the words "returned to the Court"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 26.

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—contd

Rule 26

In sub-rule (3), for the word "may" substitute the words "shall, unless good cause to the contrary is shown"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 31

In sub-rules (2) and (3), for the words "six months", wherever they occur, substitute the words "three months or such further time as the Court may, in any special case, for good cause shown, direct"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 32

(a) *In sub-rule (3)—*

(i) *for the words "one year" substitute the words "three months",*

(ii) *after the word "application" insert the words "and the Court may also, for good cause shown, extend the time for the attachment remaining in force for a period not exceeding one year", and*

(b) *in sub-rule (4), for the words "one year" substitute the words "three months or such further time as may have been fixed by the Court under sub-rule (3)"*

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 39

(a) *To sub-rule (1), the following words shall be added, namely —*

"and for the cost of conveyance of the judgment-debtor from the place of his arrest to the Court-house"

(b) *For*

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—contd

(b) For sub-rules (4) and (5), the following sub-rules shall be substituted, namely —

“(4) Such sum (if any) as the Judge thinks sufficient for the subsistence and cost of conveyance of the judgment-debtor for his journey from the Court-house to the civil prison and from the civil prison, on his release, to his usual place of residence together with the first of the payments in advance under sub-rule (3) for such portion of the current month as remains unexpended, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the civil prison and the subsequent payments (if any) shall be paid to the officer in charge of the civil prison

(5) Sums disbursed under this rule by the decree-holder for the subsistence and the cost of the conveyance (if any) of the judgment-debtor shall be deemed to be costs in the suit”

(Notifications Nos 9633, and 9634, dated the 19th December, 1930)

Rule 40

Insert the following as sub-rules (6), (7) and (8) below sub-rule (5) —

(6) When a judgment-debtor is ordered to be detained in the custody of an officer of the Court under sub-rule (2) or the proviso to sub-rule (3) above, the Court may direct the decree-holder to deposit such amount as, having regard to the specified or probable length of detention, will provide

(a) for the subsistence of the judgment-debtor at the rate to which he is entitled under the scales fixed under section 57

(b) for the payment to the officer of the Court in whose custody the judgment-debtor is placed of such fees (including lodging charges) in respect thereof as the Court may by order fix

Provided (1) that the subsistence allowance and the fees payable to the officer of the Court shall not be recovered for more than one month at a time, and

(ii) that

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—contd

- (ii) that the Court may from time to time require the decree-holder to deposit such further sums as it deems necessary
- (7) If a decree-holder fails to deposit any sum as required under sub-rule (6) above, the Court may disallow the application and direct the release of the judgment-debtor
- (8) Sums disbursed by the decree-holder under sub-rule (6) shall be deemed to be costs in the suit. Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed

(Notification No 7719, dated the 29th November, 1938)

Rules 43 to 43A

Substitute the following for rule 43 —

“43 (1) Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of any of his subordinates and shall be responsible for the due custody thereof

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value the attaching officer may sell it at once, and

Provided also that when the property attached consists of live-stock, agricultural implements or other articles which cannot be conveniently removed, and the attaching officer does not act under the first proviso to this rule, he may at the instance of the judgment-debtor or of the decree-holder or any person claiming to be interested in such property, leave it in the village or at the place where it has been attached—

- (a) in the charge of the judgment-debtor, or of the station pound-keeper, if any, or

(b) in

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—*contd*

(b) in the charge of the decree-holder, or of the person claiming to be interested in such property or of such respectable person as will undertake to keep such property, on his entering into a bond with one or more sureties in an amount not less than the value of the property, that he will take proper care of such property and produce it when called for

(2) The attaching officer shall make a list of the property attached and shall obtain thereto the acknowledgment of the person in whose custody the property is left, and if possible, of the parties to the suit, and of at least one respectable person in attestation of the correctness of the list. If the property attached includes both live-stock and other articles a separate list of the live-stock shall similarly be prepared and attested

43-A (1) When an application is made for the attachment of live-stock the Court may demand in advance in cash at rates to be fixed half-yearly, or oftener, if necessary, by the Courts with the sanction of the District Court, the amount requisite for the maintenance of the live-stock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance and all other charges requisite for the maintenance and custody of the live-stock

(2) If the live-stock be entrusted to any person other than the judgment-debtor the amount paid by the decree-holder for the maintenance of the cattle, or a part thereof, may, at the discretion of the Court, be paid to the custodian of the live-stock for their maintenance. The produce, such as milk, eggs, etc., if any, may either be sold, as promptly as possible, for the benefit of the judgment-debtor, or may, at the discretion of the Court, be set off against the cost of maintenance of the live-stock "

(Notification No 2225, dated the 24th March, 1938)

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—*contd*

Rule 53

(a) In clause (b) of sub-rule (1) and in sub-rule (4) after the words "to such other Court" insert the words "and to any other Court to which the decree has been transferred for execution"

(b) In sub-clause (ii) of clause (b) of sub-rule (1) —

(a) after the word "judgment-debtor" insert the words "with the consent of the said decree-holder expressed in writing or with the permission of the attaching court",

(b) for the words "its own" substitute the words "the attached"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 54

After sub-rule (2) insert the following sub-rule —

"(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property and against all other transferees from the judgment-debtor from the date on which such order is made"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 57

For rule 57, substitute the following rule —

"57 Where any property has been attached in execution of a decree, and the Court for any reason passes an order dismissing the execution application, the Court shall direct whether the attachment shall continue or cease. If the Court omits to make any such direction, the attachment shall be deemed to have ceased to exist"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 58

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXI—contd

Rule 58

In sub rule (2), after the word "objection" where it occurs for the second time, insert the following words —

'where the property to be sold is unmoveable property, the Court may, in its discretion, direct that the sale be held, but shall not become absolute until the claim or objection is decided'

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 65

In rule 65, the following sentence shall be added namely —

"Such officer or person shall be competent to declare the highest bidder as purchaser at the sale, provided that, where the sale is made in, or within the precincts of the Court-house, no such declaration shall be made without the leave of the Court"

(Notifications Nos 3733 and 3734, dated the 24th June, 1933)

Rule 66

In clause (e) of sub-rule (2) of rule 66, after the words "property" insert the words —

"including the decree-holder's estimate of the approximate market price"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 69

In sub-rule (2) for the words "seven days" substitute the words "fifteen days"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

(Rules made by the High Court of Judicature at Nagpur under Section 122.)

ORDER XXI—contd

Rule 75

In sub rule (2), after the words "being stored" insert the words "or, where it appears to the Court that the crop can be sold to greater advantage in an unripe state"

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 85

In rule 85, the following explanation shall be added, namely —

'Explanation —When an amount is tendered on any day after 1 P M but paid into Court on the next working day between 11 A M and 1 P M the payment shall be deemed to have been made on the day on which the tender is made "

(Notifications Nos 2476 and 2477, dated the 24th April, 1933)

Rule 89

In sub-rule (1), for the words "any person either owning such property or holding an interest therein by virtue of a title acquired before such sale" substitute the words "any person claiming any interest in the property sold at the time of the sale or at the time of the petition, or acting for, or in the interest of, such person "

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 90

After the proviso to sub-rule (1), insert the following further proviso —

"Provided also that no such application for setting aside the sale shall be entertained upon any ground which could have been, but was not put forward by the applicant before the commencement of the sale "

(Notifications Nos 7114 and 7115, dated the 9th September, 1930)

Rule 92.

(Rules made by the High Court of Judicature at Nagpur under
Section 122)

ORDER XXI—concl'd

Rule 92

"In sub-rule (1), after the word "make" insert the words
"subject to the provisions of rule 58 (2)"

(Notifications Nos 7114 and 7115, dated the 9th September,
1930)

Rule 94

In rule 94 add a comma after the word "sold" and insert
the words "the amount of the purchase money" between the
word "sold" and the word "and"

(Notifications Nos 6806 and 6807, dated the 30th August 1929)

Rule 98

In rule 98—

(a) after the word "instigation", in both places where it
occurs insert the words "or on his behalf", and—

(b) after the words "thirty days" insert the words —

" , and may order the person or persons whom it holds
responsible for such resistance or obstruction to pay
jointly or severally in addition to costs, reasonable
compensation to the decree-holder or the purchaser,
as the case may be, for the delay and expense
caused to him in obtaining possession The order
made thereon shall have the same force and be
subject to the same conditions as to appeal or other-
wise as if it were a decree "

(Notifications Nos 7114 and 7115, dated the 9th September,
1930)

Rule 99

In rule 99, for the word "judgment-debtor" where it occurs
in brackets, substitute the words "persons mentioned in rule 95
or 98"

(Notifications Nos 7114 and 7115, dated the 9th September,
1930)

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXV

Rule 1 (1)

In rule 1 (1) insert the words "or that any plaintiff is being financed by a person not a party to the suit" between the words "other than the property in suit" and "the Court may"

(Notifications Nos 2563 and 2564, dated the 21st March 1929)

 New rule 3

After rule 2, add the following new rule —

"3 (1) Where any plaintiff has, for the purpose of being financed in the suit, transferred or agreed to transfer any share or interest in the property in suit to a person who is not already a party to the suit, the Court may order such person to be made a plaintiff to the suit if he consents, and may either of its own motion or on the application of any defendant order such person, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant. In the event of such security not being furnished within the time fixed, the Court may make an order dismissing the suit so far as his right to, or interest in, the property in suit is concerned or declaring that he shall be debarred from claiming any right to, or interest in, the property in suit

(2) If such person declines to be made a plaintiff the Court may implead him as a defendant and may order him, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any other defendant. In the event of such security not being furnished within the time fixed, the Court may make an order declaring that he shall be debarred from claiming any right to, or interest in, the property in suit

(3) Any plaintiff or defendant against whom an order is made under this rule may apply to have it set aside and the provisions of sub-rules (2) and (3) of rule 2 shall apply, *mutatis mutandis*, to such application "

(Notifications Nos 2563 and 2564, dated the 21st March, 1929)

ORDER XXXII.

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XXXII

Rule 3

(a) For rule 3 substitute the following —

Guardian for the suit to be appointed by Court for minor defendant

3 Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit of such minor "

(Notifications Nos 4733 and 4736, dated the 20th June, 1928)

(b) Renumber rule 3, as rule 3 (1) and re-number sub-rule (5) of rule 3 inserted by the Code of Civil Procedure (Third Amendment) Act, 1937 (XVI of 1937), as sub-rule (2)

(Notification No 2431, dated the 2nd April, 1938)

Rule 4

Substitute the following for rule 4 —

Who may act as next friend or guardian for the suit

"4 (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or as his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act in either capacity

Procedure for appointment of guardian for the suit

4-A (1) No person, except the guardian appointed or declared by competent authority, shall, without his consent, be appointed guardian for the suit

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff

(3) Unless the Court is otherwise satisfied of the fact that the proposed guardian has no interest adverse to that of the minor in the matters in controversy in the suit and that he is a fit person to be so appointed, it shall require such application to be supported by an affidavit verifying the fact

(4) No

(Rules made by the High Court of Judicature at Nagpur under Section 122.)

ORDER XXXII—concl'd

(4) No order shall be made on any application for the appointment as guardian for the suit of any person, other than a guardian of the minor appointed or declared by competent authority, except upon notice to the proposed guardian for the suit and to any guardian of the minor appointed or declared by competent authority, or, where there is no such guardian, the person in whose care the minor is, and after hearing any objection that may be urged on a day to be specified in the notice. The Court may, in any case, if it thinks fit, issue notice to the minor also.

(5) Where, on or before the specified day, such proposed guardian fails to appear and express his consent to act as guardian for the suit, or, where he is considered unfit, or disqualified under sub-rule (3), the Court may, in the absence of any other person fit and willing to act, appoint any of its officers or a pleader to be guardian for the suit.

(6) In any case in which there is a minor defendant the Court may direct that a sufficient sum shall be deposited in Court by the plaintiff from which sum the expenses of the minor defendant in the suit shall be paid. The matter shall be adjusted in accordance with the final order passed in the suit in respect of costs."

(Notifications Nos 4733 and 4736, dated the 20th June, 1928)

 ORDER XLI

Rule 14.

To rule 14 the following sub-rule shall be added —

"(3) The appellate Court may in its discretion dispense with notice to any respondent against whom the suit was heard *ex parte*."

(Notifications Nos 8519 and 8520, dated the 15th December, 1927)

Rule 21

705

23

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XLI—concl'd

Rule 21.

(a) Existing rule 21 shall be re-numbered as sub-rule (1), and

(b) after sub-rule (1) so re-numbered the following shall be inserted as sub-rule (2), namely —

“(2) The provisions of section 5 of the Indian Limitation Act, IX of 1908 shall apply to applications under sub-rule (1)”

(Notifications Nos 8346 and 8347, dated the 17th December, 1932)

New Rule 15-A

Insert the following as rule 15-A —

“Where, after admission of an appeal in the High Court, the Rules of the High Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where, after due service of a notice intimating the steps to be taken and the date before which they must be taken, the appellant fails to take such steps within the prescribed time, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit”

Rule 19.

In rule 19, after the words and figures “rule 11, sub-rule (2)” insert the words and figures “or rule 15-A” followed by a comma

(Notifications Nos 1947 and 1948, dated the 25th March, 1937)

ORDER XLV

(Rules made by the High Court of Judicature at Nagpur under Section 122)

ORDER XLV

Rule 3

For sub-rule (2), the following sub-rules shall be substituted, namely —

“(2) Upon receipt of such petition, the Court, after sending for the record and after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, may dismiss the petition

(3) Unless the Court dismisses the petition under sub-rule (2), it shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted ”

(Notifications Nos 5487 and 5488, dated the 3rd August, 1932)

New Rule 7-A

Insert the following as new rule 7-A —

7-A No such security as is mentioned in rule 7 (1), clause (a), shall be required from the Secretary of State for India in Council or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity ”

(Notifications Nos 2229 and 2230, dated the 4th March, 1930)

ORDER XLVIII

Rule 1 (2)

To sub rule (2), prefix the words “Except as provided in Order IV, rule 1 (2)” and substitute the word “the” for “The”

(Notifications Nos 7390 and 7391, dated the 19th September, 1929)

(Rules made by the High Court of Judicature at Nagpur under Section 122)

APPENDIX E

Form No 38

In form No 38, insert the words "for Rs between the words "the purchaser" and "at a sale" (Notifications Nos 6806 and 6807, dated the 30th August, 1929)

APPENDIX H (MISCELLANEOUS)

Form No 11

For form No 11 substitute the following —

"No 11

NOTICE TO MINOR DEFENDANT AND GUARDIAN

(Order 32, rule 4-A)

(Title)

To

| | |
|--------------------------|------------------|
| | Minor Defendant. |
| <u>Legally appointed</u> | Guardian |
| Actual | |
| Proposed | Guardian. |

Whereas an application has been presented on the part of
the plaintiff on behalf of the
 minor defendant, for the appointment of you as the
 guardian of the suit of the minor defendant
 (you the said minor*) you
his legally appointed guardian and you
 actual

the proposed guardian for the suit are hereby required to take notice that unless you the proposed guardian, appear before this Court on or before the day appointed for the hearing of the

case

*The portion in brackets should be scored out if no notice is to issue to the minor defendant

(Rules made by the Chief Court of Oudh under Section 122)

APPENDIX VIII

RULES MADE BY THE CHIEF COURT OF OUDH UNDER
SECTION 122

(Approved by the Local Government on April 20, 1927 - Published in the United Provinces Gazette on April 30, 1927, under Section 127 of the Code of Civil Procedure)

FIRST SCHEDULE TO THE CODE OF CIVIL PROCEDURE, 1908

ORDER III

Rule 5

For the words "on the pleader of any party" substitute the words "on a pleader who has been appointed to act for any party"

ORDER IV

Rule 1

To sub rule (2) add the following words—"and except with the permission of the presiding officer, for reasons to be recorded, no plaint shall be admitted until the necessary process fee has been paid into Court"

ORDER V

Rule 1A

Add a new sub-rule (1A) after sub-rule (1) as follows—

"(1A) A party shall file with his application for the issue of a summons to the defendant or opposite party a printed summons form, in duplicate, one part being in the Urdu and the other in the Nagri character, duly filled up, except in respect of the date of appearance and of the summons, in a bold, clear and easily legible handwriting, provided that—

- (a) if the party to be served is a European British subject, the party applying for the issue of the summons shall file a special form which shall be filled up in English, and

(b) the

(Rules made by the Chief Court of Oudh under Section 122)

ORDER V—*contd*

(b) the presiding officer may, in his discretion, direct that such forms in general or that any particular such forms be filed up entirely in the office of the Court ”

Rule 2

Omit the words “or, if so permitted, by a concise statement ”

Rule 15

For the words “where in any suit the defendant cannot be found” substitute the words “where a summons has been issued to a defendant on the institution of a suit and he is absent from the address stated in the summons ”

Rule 20A

Between rules 20 and 21, insert the following —

“20A (1) Where the defendant resides in British India outside the province of Oudh or within the limits of a headquarters town of a district in that province, a summons may be served on him by registered post and in this case, where an acknowledgment purporting to be signed by the defendant or an endorsement by a postal servant that the defendant refused service has been received, the process shall, unless the contrary is proved, be deemed to have been served

(2) Where the registered address of the defendant or opposite party, as defined in Order VIII, rule 11, is within the limits of a headquarters town or of a municipality of India (including Burma) or Ceylon, a notice, summons or other process may be served on him at that address by registered post and such service shall be deemed to be as effectual as if the notice or process had been personally served ”

Rule 25

Substitute the word “may” in place of the word “shall ”

Rule 26

(Rules made by the Chief Court of Oudh under Section 122)

ORDER V—concl'd

Rule 26

In rule 26 (b), after the words "the summons may," insert the words "in addition to, or in substitution for, the method permitted by rule 25 "

Rule 27

*Insert the word 'air' between the words "military" and "or "

Rule 28

Add the following as 28 (a) and re-number the present rule as (b) —

"(a) Where the defendant is an officer in His Majesty's military, naval or air forces, the Court shall send the summons direct to him for service together with a copy to be retained by him "

ORDER VII

Rule 9.

In rule 9 (1), for the words "and if the plaint is admitted, shall present," substitute the words "and shall, at the same time, present " Also delete the words "unless the Court present such statements," as well as sub rules (2) and (3), and re-number sub-rule (4) as sub-rule (2) deleting the words "or statements "

Rule 14.

Substitute the following for rule 14 (2) —

"14 (2) Where he relies on any other documents as evidence in support of his claim, he shall enter all of them in a list to be added or annexed to the plaint and shall produce in Court, when the plaint is presented, such of them as are in his possession or power In regard to the documents not in his possession or power, he shall, if possible, state in whose possession or power they are, and shall cause them to be summoned

*The amendment was provided for by Act 10 of 1927, *supra*, p 122

(Rules made by the Chief Court of Oudh under Section 122)

ORDER VII—*contd.*

summoned for production before the Court on a date to be fixed by the Court for the purpose

Explanation —A certified copy of a public document is a document in the power' of a party, but where a document is in the possession of a person other than the plaintiff, it will not be deemed to be 'in the power' of the plaintiff "

Rule 15

Delete rule 15

Rule 17.

Add the following proviso to rule 17 —

"Provided that, if the copy is not written in English or is written in a character other than the ordinary Persian or Nagri character in use, the procedure laid down in Order XIII, rule 12, as to verification shall be followed, and in that case the Court or its officer need not examine or compare the copy with the original "

Rules 19 to 27

Add the following rules —

"19 Every plaint or original petition shall be accompanied by an address at which service of notice, summons or other process may be made on the plaintiff or petitioner. This address shall be called the 'registered address,' and service thereat shall be deemed to be sufficient service

20 Any party subsequently added as plaintiff or petitioner shall, in like manner, file a registered address at the time of applying or consenting to be joined as plaintiff or petitioner

21 A registered address shall be within the local limits of the District Court within which the suit or petition is filed, if the plaintiff or petitioner resides or carries on business within those limits

22 If a plaintiff or petitioner fails to file a registered address as required above, he shall be liable, at the discretion of the Court, to have his suit dismissed or his petition rejected

An

(Rules made by the Chief Court of Oudh under Section 122)

ORDER VII—*contd*

An order under this rule may be passed by the Court *suo motu* or on the application of any party

23 Where the registered address of the plaintiff or petitioner is within the limits of a headquarters town or of a municipality of India (including Burma) or Ceylon, a notice, summons or other process may be served on him at that address by registered post and such service shall be deemed to be as effectual as if the notice or process had been personally served

24 In all cases to which rule 23 does not apply, where a plaintiff or petitioner is not found at his registered address and no agent or adult male member of his family on whom a notice or process can be served is present a copy of the notice or process shall be affixed to the outer door of the house. If, on the date fixed, such plaintiff or petitioner is not present another date shall be fixed and a copy of the notice, summons or other process shall be sent to his registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served

25 Whenever a plaintiff or petitioner has engaged a pleader to act for him, a notice or process for service on him shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at his registered address

Provided that, where a notice is served on a pleader under the above rule, he shall be given sufficient time to communicate with his client and to receive instructions

Explanation—Where 10 days' time has been allowed under this rule, this shall be deemed sufficient time within the meaning of this proviso in the absence of an application made within such ten days by the pleader concerned for further time

26 A plaintiff or petitioner who wishes to change his registered address shall file a verified petition, and the Court shall direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit or proceedings as the Court may deem it necessary to inform, and may be either served upon the pleader for such parties or be sent them by registered post, as the Court thinks fit

(Rules made by the Chief Court of Oudh under Section 122)

ORDER VII—concl'd

27 Nothing in rules 19 to 26 shall prevent the Court from directing the service of a notice or process in any other manner, if, for any reason, it thinks fit "

ORDER VIII

Rule 1

Add the following as rule 1 (2), and read the existing rule 1 as rule 1 (1) —

"1 (2) The defendant shall file with his written statement a list of all the documents on which he relies as evidence in support of his case, shall produce with the written statement such of the documents as are in his possession or power, and shall cause the others to be summoned on a date to be fixed by the Court for the purpose

Explanation —A certified copy of a public document is a document 'in the power' of a party, but where a document is in the possession of a person other than the defendant, it will not be deemed to be 'in the power' of the defendant "

Rules 11 to 13

Add the following rules —

"11 Every defendant in a suit or opposite party in any proceeding shall, on the first day of his appearance in Court, file an address (to be called the 'registered address') for service on him of any subsequent notice, summons or other process, and, if he fails to do so, shall be liable, at the discretion of the Court to have his defence or reply, if any, struck out, and to be placed in the same position as if he had made no defence or reply

An order under this rule may be passed by the Court *suo motu* or on the application of any party

12 Rules 21, 23 and 25 to 27 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule, and rule 24 shall, in the same manner, apply but as if the words at the beginning, 'In all cases to which rule 23 does not apply' were omitted

13 Nothing in rules 11 and 12, shall apply to the notice prescribed by Order XXI, rule 22 "

ORDER IX

(Rules made by the Chief Court of Oudh under Section 122)

ORDER IX

Rule 13

In rule 13, between the words "was not duly served or that" and the words "he was prevented by any sufficient cause," insert the words "notwithstanding due service of the summons," and at the end of the rule add the following proviso —

"Provided also that no *ex parte* decree shall be set aside under this rule on the ground that the summons was not duly served, if the Court is satisfied that the defendant had information of the date of hearing sufficient to enable him to appear and answer the plaintiff's claim

Explanation —Where a summons has been served under Order V, rule 15, on an adult male member having an interest adverse to that of the defendant in the subject-matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule "

 ORDER XIII
Rule 1

For rule 1, substitute the following —

"1 (1) The parties or their pleaders shall produce or cause to be produced on the date fixed by the Court, under Order VII, rule 14, and Order VIII, rule 1 (2), or on any subsequent date which may be fixed by the Court for the purpose, all the documentary evidence of every description in their possession or power on which they intend to rely and which has not already been filed in Court, and all documents which the Court has permitted or ordered to be produced

(2) The parties or their pleaders may also file with the permission of the Court, either on the date of hearing or any subsequent date to be fixed by the Court for the purpose, a supplementary list of further documents on which they intend to rely, and such documents shall be produced by them within the time fixed by the Court

(3) The

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XIII—concl'd

(3) The Court shall receive the documents so produced, provided that (whenever the documents are produced at any stage of the case) they are accompanied by an accurate list thereof prepared in such form as the Chief Court may direct.

Explanation—A certified copy of a public document is a document 'in the power' of a party, but where a document is in the possession of a person other than the plaintiff or defendant it will not be deemed to be 'in the power' of the plaintiff or defendant "

Rule 4.

In rule 4 (1) (d), insert the words "in the Judge's own handwriting" between the words "statement" and "of its having been so admitted "

ORDER XVI.

Rule 1.

For rule 1, substitute the following —

"1 (1) The Court may, in any suit or class of suits, require any party to file by a date to be fixed by the Court, a list of witnesses whom he proposes to produce, and may, if necessary, direct that such list be kept in a sealed envelope for such time as the Court considers desirable

Where such a list has been called for from any party, the latter shall not, except for special reasons, be permitted to summon or produce as witness any person whose name has not been entered in the list

(2) Subject to the provisions of sub-rule (1) the parties may after the suit is instituted, obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents "

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XVI—concl'd

Rule 8.

Add the following provisos —

“Provided that any party may, with the sanction of the Court, himself or by his agent effect service on his own witness, as if he were an officer of the Court, but in this case no diet money to a witness by a party or by his agent shall be included in the costs of the suit unless the witness verifies such payment before an officer of the Court

Provided also that the special procedure for the service of summons upon defendant under Order V, rule 20A (1) shall not apply to service of summons under this order ’

ORDER XVII

Rule 1

To rule 2 add the following as sub-rule (2), and read the existing rule 2 as 2 (1) —

“(2) Where before any such day, the evidence or a substantial portion of the evidence of any party has been recorded, and such party fails to appear on such day, the Court may, in its discretion proceed with the case as if such party were present and may dispose of it on the merits

Explanation —No party shall be deemed to have failed to appear if he is either present in person, or is represented in Court by his agent or pleader though engaged only for the purpose of making an application ”

Rule 3

For the existing rule 3, substitute the following —

“3 Where any party to a suit to whom time has been granted fails, without reasonable excuse, to produce his evidence, or to cause the attendance of his witnesses, or to comply with any previous order or to perform any other act necessary to the further progress of the suit for which time has been allowed, the Court may, notwithstanding such default, and whether such party is present or not, proceed to decide the suit on the merits ”

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XVIII

Rules 2 and 3

For the present rules 2 and 3, substitute the following —

“2 (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case, indicating the relevancy of each of the documents produced by him and the nature of the evidence which each of his witnesses is expected to give and shall then produce his evidence in support of the issues which he is bound to prove

(2) The other party shall then state his case in the manner aforesaid and produce his evidence (if any)

3 (1) Where there are several issues the burden of proving some of which lies on the other party, the party beginning may, at his option, either state his case in the manner aforesaid and produce his evidence on those issues or reserve the statement of his case and the production of his evidence or those issues by way of answer to the evidence produced by the other party, and, in the latter case, the party beginning may state his case in the manner aforesaid and produce evidence on those issues after the other party has produced all his evidence

(2) The substance of the statement of the case provided for by rules 2 and 3(1) above shall be taken down by or under the personal direction and superintendence of the Judge and shall form part of the proceedings

(3) After both the parties have produced their evidence, the party beginning may address the court on the whole case, the other party may then address the court on the whole case, and the party beginning may reply generally on the whole case, provided that in doing so he shall not, without the leave of the Court, raise questions which should have been raised in the opening address ”

Rule 8

To rule 8, add the following proviso —

“Provided that such memorandum shall not be necessary in the case of a Judge who has obtained the previous sanction of the Chief Court to dictate evidence in open Court ”

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XVIII—concl'd

—
Rule 14

In line 1 of rule 14(1), between the words "is" and "unable" insert not authorized by the Chief Court to dictate and is"

—
ORDER XXI

Rule 5

In rule 5, for the word "district" where it occurs after the words "same" and "different" read "province"

—
Rule 6

To rule 6, add the following as sub-rule (2) and re-number 6 as 6 (1) —

"(2) Such copies and certificates may, at the request of the decree-holder, be handed over to him or to such person as he appoints, in a sealed cover to be taken to the Court to which they are to be sent"

—
Rule 11

In rule 11, for clause (f) of sub-rule (2) substitute the following —

"(f) the date of the last application if any"

—
Rule 17

In rule 17 sub rule (1), delete the last sentence beginning with the words "and, if they" and ending with the words "to be fixed by it," and substitute the following sentence in lieu thereof —

"and if they have not been complied with, the Court may allow the defect to be remedied then and there, or may fix a time within which it should be remedied, and, in case the decree-holder fails to remedy the defects within such time, the Court may reject the application"

Rule 22.

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—contd

Rule 22

(a) In rule 22, for the words "one year," wherever they occur in this rule read the words "three years "

(b) To sub-rule (2) of this rule add the following proviso —

"Provided that no order for the execution of a decree shall be invalid by reason of the omission to issue a notice under this rule unless the judgment-debtor has sustained substantial injury by reason of such omission "

Rule 24

In rule 24 (3) after the words at the end of the sub-rule, "be executed" add the words "and a day shall be specified on or before which it shall be returned to Court "

• Rule 25

For the existing rule 25 (2) substitute the following —

"(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court may examine him personally or upon affidavit touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result "

Rule 26

In rule 26 (3) for the words "the Court may" read the words "the Court shall, unless good cause to the contrary is shown "

Rule 31

In rule 31, sub-rules (2) and (3), for the words "six months," substitute the words "three months or such further time as the Court may, in any special case, for good cause shown, direct "

Rule 32

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—contd

Rule 32

(a) In rule 32 (3) for the words "one year" substitute the words "three months," and at the end of the sub-rule add the words "and the Court may also, for good cause shown, extend the time for the attachment remaining in force for a period not exceeding one year"

(b) In rule 32 (4) for the words "one year" substitute the words "three months, or such further time as may have been fixed by the Court under the previous sub-rule"

Rule 39

In rule 39 (5) delete the words "in the civil prison"

Rule 40

Add the following proviso to rule 40(5) —

"Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Court before making the order of committal may leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding 10 days, or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period, if the decree be not sooner satisfied. When the Court sees fit to leave a judgment-debtor in the custody of an officer of the Court and the judgment-debtor does not pay the costs incidental to such intermediate custody, it shall be competent for the Court to require the decree holder, on pain of his application for arrest being disallowed, to pay into Court such sum as the Judge deems sufficient to cover such costs including fees for process-server, subsistence of the judgment-debtor and cost of conveyance, if any, and sums disbursed by the decree-holder under this proviso shall be deemed to be costs in the suit"

Rule 53

(a) In rule 53, sub-rule (1) (b), in the third line, and in sub-rule (4) in the eighth line, after the words "to such other Court" add the words "and to any other Court to which the decree has been transferred for execution"

(b) In

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—contd

(b) In sub-rule (6) for the words "after receipt of notice thereof" read the words "after receipt of notice, or with the knowledge thereof"

Rule 54

To rule 54, add the following sub-rule (3) —

"(3) The order shall take effect as against purchasers for value in good faith from the date when a copy of the order is affixed on the property, and against all other transferees from the judgment-debtor from the date on which such order is made "

Rule 55

For rule 55 substitute the following —

"55 (1) Where an application has been made to the Court under section 73, sub-section (1), for rateable distribution of assets in respect of the property of a judgment-debtor by a person other than the holder of the decree for the execution of which the original order of attachment was passed, notice shall be sent to the sale officer executing the decree

(2) Where—

- (a) the amount decreed [which shall include the amount of any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-rule (1)] with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
- (b) satisfaction of the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-rule (1)], is otherwise made through the Court or certified to the Court, or
- (c) the decree [including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-rule (1)] is set aside or reversed, the attachment shall be deemed

to

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—contd

to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule ”

Rule 57

For rule 57, substitute the following —

“57 Where any property has been attached in execution of a decree, and the Court for any reason passes an order dismissing the execution application, the Court shall direct whether the attachment shall continue or cease. If the Court omits to make any such direction, the attachment shall be deemed to subsist ”

Rule 58

In rule 58 add the following words to sub-rule (2) —

“or may in its discretion make an order postponing the delivery of the property after the sale pending such investigation. And in no case shall the sale become absolute until the claim or objection has been decided ”

Rule 68

In rule 68 for the words “fifteen days” read the words “seven days ”

Rule 69

In rule 69 (2) for the word “seven” read the word “fourteen,” and add the following proviso —

“Provided that the Court may dispense with the consent of any judgment-debtor who has failed to attend in answer to a notice issued under rule 66 ”

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—contd

Rule 72

(a) For rule 72 (1), substitute the following —

“72 (1) The holder of a decree, in execution of which property is sold, shall be competent to bid for, or purchase the property, provided that the judgment-debtor may, by application, supported by an affidavit, apply to the Court to debar the decree-holder from purchasing the property and the Court may, on such application, either debar the decree-holder from purchasing the property, or grant permission to do so on such terms as may seem just ”

(b) In sub-rule (2) for the words “with such permission” read the words “the property sold ”

(c) Delete sub-rule (3)

Rule 75

In rule 75 (2) after the words “being stored” insert the words “or where it appears to the Court that the crop can be sold to greater advantage in an unripe state ”

Rule 84

To rule 84 (2) add the following —

“The Court shall not dispense with the requirements of this rule in a case in which there is an application for rateable distribution of assets ”

Rule 89

In rule 89, sub-rule (1), for the words “any person before such sale,” read the words “the judgment-debtor, or any person deriving title through the judgment-debtor, or any person holding an interest in the property ”

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—contd

Rule 90

To rule 90 add the following second proviso —

“Provided also that no such application for setting aside the sale shall be entertained upon any ground which could have been, but was not put forward by the applicant before the commencement of the sale ”

Rule 92

In rule 92, sub-rule (1) after the words “the Court shall,” insert the words subject to the provisions of rule 58 (2) ’

Rule 98

In rule 98, after the words “at his instigation,” wherever they occur, insert the words “or on his behalf” and after the words “thirty days” at the end of the rule, add the words “and may order the person or persons whom it holds responsible for such resistance or objections to pay jointly or severally in addition to costs, reasonable compensation to the decree-holder for the delay and expense caused to him in obtaining possession. The order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree ”

Rule 99

In rule 99, for the words in brackets “(other than the judgment-debtor)” read the words in brackets, “(other than the persons mentioned in rules 95 and 98 hereof) ”

Rules 104 to 113

Add the following rules —

“104 The Court may, in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge on a negotiable instrument, or a debt recoverable only in a revenue court), or any moveable property not in the possession of the judgment-debtor, issue a notice to any person (hereinafter called the garnishee) liable to pay such debt, or

to

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—*contd*

to deliver or account for such moveable property, calling upon him to appear before the Court and show cause why he should not pay or deliver into Court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the cost of execution.

105 If the garnishee does not forthwith or within such time as the Court may allow, pay or deliver into Court the amount due from or the property deliverable by him to the judgment-debtor, or so much as may be sufficient to satisfy the decree and the cost of execution and does not dispute his liability to pay such debt or deliver such moveable property, or if he does not appear in answer to the notice, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him

106 If the garnishee disputes his liability the Court, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and upon the determination of such issue shall pass such order upon the notice as shall be just

107 Whenever in any proceedings under these rules it is alleged or appears to the Court to be probable, that the debt or property attached or sought to be attached belongs to some third person or that any third person has a lien or charge upon, or an interest in it, the Court may order such third person to appear and state the nature of his claim, if any, upon such debt or property and prove the same, if necessary

108 After hearing such third person, and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing when ordered the Court may pass such order as is hereinbefore provided or make such other order as it shall think fit, upon such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as to such Court shall seem just and reasonable

109 Payment or delivery made by the garnishee whether in execution of an order under these rules or otherwise shall be a valid discharge to him as against the judgment-debtor, or any other person ordered to appear as aforesaid, for the amount paid, delivered or realized although such order of the judgment may be set aside or reversed

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXI—*concl'd*

110 Debts owing from a firm carrying on business within the jurisdiction of the Court may be attached under these rules, although one or more members of such firm may be resident out of the jurisdiction

Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be sufficient appearance by the firm

111 The costs of any application under these rules and of any proceedings arising therefrom or incidental thereto, or any order made thereon, shall be in the discretion of the Court

112 (1) Where the liability of any garnishee has been tried and determined under these rules, the order shall have the same force, and be subject to the same conditions as the appeal or otherwise as if it were a decree

(2) Orders not covered by sub-rule (1) shall be appealable as orders made in execution

Illustration—An application for a garnishee order is dismissed either on the ground that the debt is secured by a charge or that there is no *prima facie* evidence of debt due. This order is appealable as an order in execution

113 All the rules in this Code relating to service upon either plaintiffs or defendants at the address filed or subsequently altered under Order VII or Order VIII shall apply to all proceedings taken under Order XXI or section 47 "

ORDER XXII

Rule 12

Add the following —

"or to proceedings in the original Court taken after the passing of the preliminary decree where a final decree also requires to be passed having regard to the nature of the suit "

ORDER XXIII

Rule 3

Add the following proviso —

"Provided that no agreement, compromise or satisfaction shall be recorded in a suit instituted under section 92, Code of

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXIII—concl'd

Civil Procedure, unless previous notice of the same has been given to the Legal Remembrancer to Government, and the Court, after hearing him, if he desires to be heard, decides to accept it "

ORDER XXV

Rule 1

To rule 1, add sub-rules (4) and (5) —

"(4) Where the plaintiff has, for the purpose of being financed in the suit, transferred or agreed to transfer any share or interest in the property in suit to a person who is not already a party to the suit, the Court may order such person to be made a plaintiff to the suit if he consents, and may either of its own motion or on the application of any defendant order such person within a time to be fixed by the Court to give security for the payment of all costs likely to be incurred by any defendant. In case of his default, the Court may dismiss the suit so far as his right to, or interest in, the property in suit is concerned, or may declare that he shall be debarred from claiming any right to, or interest in, the property in suit

(5) If such person declines to be made a plaintiff, the Court may implead him as a defendant and may order him, within a time to be fixed by the Court, to give security for the payment of all costs likely to be incurred by any other defendant. In case of his default, the Court may declare that he shall be debarred from claiming any right to, or interest in, the property in suit "

ORDER XXVI

Rule 18

In rule 18 (1), after the words "agents or pleaders" substitute a comma for the full stop, and add the following words —

"and shall direct the party applying for the examination of the witness, or in its discretion any other party to the suit, to supply the Commissioner with a copy of the pleadings and issues "

ORDER XXXII.

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXXII

Rule 3

Add the following proviso to rule 3 (4) —

“Provided that if the minor is under ten years of age no such notice shall be issued to him ”

Rule 4

Substitute the following for rule 4 —

“4 (1) Where a minor has a guardian appointed or declared by competent authority no person other than such guardian shall act as next friend, except by leave of the Court

(2) Subject to the provisions of sub-rule (1) any person who is of sound mind and has attained majority may act as next friend of a minor, unless the interest of such person is adverse to that of the minor, or he is a defendant, or the Court for other reasons to be recorded considers him unfit to act

(3) Every next friend shall, except as otherwise provided by sub-rule (5) of this rule, be entitled to be re-imbursed from the estate of the minor any expenses incurred by him while acting for the minor

(4) The Court may, in its discretion, for reasons to be recorded, award costs of the suit, or compensation under section 35A or section 95 against the next friend personally as if he were a plaintiff

(5) Costs or compensation awarded under sub-rule (4) shall not be recoverable by the guardian from the estate of the minor, unless the decree expressly directs that they shall be so recoverable ”

Rule 4A

Add the following rule 4A —

“4A (1) Where a minor has a guardian appointed by competent authority, no person other than such guardian shall be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be appointed

(2) Where

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXXII—concl'd

(2) Where there is no such guardian, or where the Court considers that such guardian should not be appointed, it shall appoint as guardian for the suit the natural guardian of the minor, if qualified, or where there is no such guardian, the person in whose care the minor is, or any other suitable person who has notified the Court of his willingness to act, or failing any such person, an officer of the Court

Explanation—An officer of the Court shall for the purposes of this sub-rule include a legal practitioner on the roll of the Court

(3) No person shall without his consent be appointed guardian for the suit provided that in all cases the consent of such person shall be presumed, unless within fifteen days of receipt of notice from the Court, he notifies to the Court his refusal to accept appointment as such guardian. Refusal to accept notice shall be presumed to be refusal to act

(4) Where an officer of the Court is appointed guardian for the suit under sub-rule (2), the Court may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require "

ORDER XXXIII

Rule 5

In rule 5(a), insert the words "and the applicant on being required by the Court to make any amendment within a time to be fixed by the Court fails to do so," between the figure "3" and the word "or"

ORDER XXXIV

Rule 4

In rule 4(2) after the words "the Court may," insert the words "of its own motion, or"*

Rule 15

* Rule 4 has since been substituted by Act 21 of 1929, *supra*, p 233

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XXXIV—concl'd

Rule 15

Read the present rule 15 as rule 15 (1) and add as sub-rule (2) the following —

' (2) Where a decree orders payment of money and charges it on immoveable property on default of payment, the amount can be realized by sale of that property in execution of that very decree "

ORDER XXXIX

Rule 1

In rule 1 delete the words "or wrongfully sold in execution of a decree" in clause (a) and delete the word "sale" after the words "damaging, alienation," and add the following proviso to the rule —

"Provided that, if it appears to the Court that the property in suit is in danger of being wrongfully sold in execution of a decree, the Court may also by order grant a temporary injunction restraining the Court executing the decree from confirming the sale held in execution of the decree until the disposal of the suit or until further orders "

ORDER XLI

Rule 3

For the existing rule 3 (1) substitute the following —

"3 (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, or accompanied by the copies mentioned in rule 1, sub-rule (1), it may be rejected, or where the memorandum of appeal is not drawn up in the manner prescribed, it may be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there "

Rule 7

For the tenth word "and", substitute a comma and between the figure "6" and the word "shall" insert "and 10"

Rule 14.

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XLI—contd

Rule 14

To rule 14, add the following sub-rule (3) —

“(3) Provided that in a case where a respondent has not appeared either during the hearing of the case in the Court from whose decree, or order the appeal is preferred or at any proceeding subsequent to that decree, it shall only be necessary for the Court to make one attempt to effect personal service on such respondent or, if such respondent is dead, on his legal representative, and, thereafter service may be effected by affixing a notice in some conspicuous place in the Court-house of the District Judge within whose jurisdiction the suit or proceeding was instituted along with one or other of the following methods, namely, publishing the notice in a newspaper or affixing it to the wall or door of the *chaupal* of the village where the respondent last resided or any other method as the Court may direct ”

Rule 23

For the words “Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court” substitute the words “Where an appellate court has reversed a decree and all questions arising in the case have not been decided, it”

Rule 27

(a) In rule 27 (1), insert the following as clause (b) —

“(b) the evidence sought to be adduced by a party to the appeal, which after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree or order under appeal was passed or made, or”

(b) Convert the existing clause “(b)” into clause “(c)”

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XLI—concl'd

Rule 38

Add the following as rule 38 —

“38 (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 26, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses

(3) Rules 21, 22, 23 and 24 of Order VII shall apply, so far as may be, to appellate proceedings ”

ORDER XLIII

Rule 1

For the present rule 1(u) substitute the following —

“an order under rule 23 of order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court ”

Rule 3

Add the following as rule 3 —

“3 In every appeal under rule 1, in every miscellaneous case, and in every suit dismissed for default, a formal order shall be drawn up stating clearly the determination of the appeal or case, the costs incurred and the parties, if any, by whom such costs are to be paid ”

ORDER XLIV

Rule 1

Add another proviso as follows —

“Provided further that no application under this rule shall be allowed unless a notice of the application has been given to the proposed respondents ”

ORDER XLV

(Rules made by the Chief Court of Oudh under Section 122)

ORDER XLV

Rule 7

In rule 7 (1) (a), insert the words "except when the Secretary of State for India in Council is the applicant" between the words "the respondent" and "and"

ORDER XLVI

Rule 8

Add the following as rule 8 —
"8 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order"

ORDER XLVII

Rule 10

Add the following as rule 10 —
"10 Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order"

ORDER XLVIII

Rule 1

In rule 1, before the words "Every process issued" prefix the words "Except as provided in Order IV, rule 1 (2)"

Rule 4

Add the following as rule 4 —
"4 Except as otherwise provided, in every interlocutory proceeding and in every proceeding after decree in the trial Court, the Court may, either on the application of any party, or of its own motion, dispense with service upon any defendant who has not appeared or upon any defendant who has not filed a written statement"

(Rules made by the Chief Court of Oudh under Section 122)

ORDER LII

After Order LI add the following as Order LII —

“Rule 38 of Order XLI shall apply, so far as may be to proceedings under section 115 of the Code”

APPENDIX E

The following form shall be used under the provisions of rule 104 of Order XXI —

EXECUTION CASE No OF 19

Decree-holder,

versus

Judgment-debtor

To

Whereas it is alleged that a debt of Rs is due from you to the judgment-debtor

Or that you are liable to deliver to the abovenamed judgment-debtor the property set forth in the schedule hereto attached, take notice that you are hereby required on or before the day of 19 , to pay into this Court the said sum of Rs to deliver or account to the Nazir of this Court for the moveable property detailed in the attached schedule, or otherwise to appear in person or by advocate, vakil or authorized agent in this Court at 10-30 in the forenoon of the day aforesaid and show cause to the contrary, in default whereof an order for the payment of the said sum, or for the delivery of the said property may be passed against you

Dated this day of 19

Munsif

Subordinate Judge

At