



Government of Bengal

**The Bengal
Agricultural Debtors Rules
1936**

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APPENDIX A.

Extract from other Acts, Rules and Manuals bearing on the Agricultural Debtors Act, 1935.

The Code of Civil Procedure, 1908—Order XVI.

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10. *Procedure where witness fails to comply with summons.*—(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 immovable property.

11. *If witness appears attachment may be withdrawn.*—Where, at any time after the attachment of his property, such person appears and satisfies the Court—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 court shall direct that the property be released from attachment and shall make such order as to the costs of attachment as it thinks fit.

12. *Procedure if witness fails to appear.*—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 :

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. *Mode of attachment* (new).—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.

17. *Application of rules 10 to 13*.—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.

18. *Procedure where witness apprehended cannot give evidence or produce document*.—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.

19. *No witness to be ordered to attend in person unless resident within certain limits*.—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.

20. *Consequence of refusal of party to give evidence when called on by court*.—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.

21. *Rules as to witnesses to apply to parties summoned*.—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.

The Bengal Money-lenders Act, 1933.

(Commencement of the Act 1st July, 1934.)

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3. Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen per cent. per annum in the case of a secured loan or twenty-five per cent. per annum in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the court under the said section where the court is satisfied that the interest charged, though not exceeding fifteen per cent. per annum or twenty-five per cent. per annum as the case may be, is excessive.

4. Notwithstanding anything in any other Act where in any suit in respect of any money lent by a money-lender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

5. No money-lender shall recover by suit interest of any kind at a rate exceeding ten per cent. per annum in respect of any loan made after the commencement of this Act under a contract.

6. No court shall, in respect of any loan made after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

Rules under the Village Self-Government Act.

Chapter VII.—Service of process by dafadars and chaukidars.

* * * * *

40. Dafadars and chaukidars shall serve process issued by union benches and union courts in accordance with rules issued under section 101 (2) (r). They shall also serve the following process :—

(i) *Revenue*.—All processes other than warrants for making arrests or warrants for distraint and sale of property.

(ii) *Criminal*.—All processes other than warrants for making arrests or warrants for making searches or warrant for distraint and sale of property:

Provided that any court may at any time cause a process to be served by the process-serving agency attached to it, instead of sending it to the union board for service by a dafadar or chaukidar.

41. Processes to be served by dafadars or chaukidars shall be sent direct to the president of the board. The president shall determine by which dafadar or chaukidar each process shall be served, and shall endorse upon each the name of the dafadar or chaukidar who is to serve it. The president shall make over to the dafadar the processes to be served by him as well as those to be served by chaukidars those which they are to serve. Similarly, after service, the dafadar shall make all processes over to the president and the president shall return them to the issuing authority.

42. The president shall maintain a register of processes sent to him for service in Form I.

*44. (1) For each process properly served, a fee of two annas shall be paid to the union fund, the cost being met from the budget of the Collector or the District Magistrate concerned.

(2) Of the fee, at least six pice shall be paid to the person who actually serves the process. The remaining two pice may, with the consent of the District Magistrate, go towards remuneration of the agency employed for keeping the process register—otherwise to the server.

APPENDIX B.

Ready Reckoner for calculating fees under the Bengal Agricultural Debtors Act.

Amount.	At $\frac{1}{2}$ per cent.	At 1 per cent.	At 2 per cent.
	Rs. a.	Rs. a.	Rs. a.
Re. 1 .. ..	..	..	..
Rs. 2 .. ..	..	..	0 1
Rs. 3 .. ..	..	..	0 1
Rs. 4 .. ..	..	0 1	0 1
Rs. 5 .. ..	..	0 1	0 2
Rs. 6 .. ..	..	0 1	0 2
Rs. 7	0 1	0 1	0 2
Rs. 8	0 1	0 1	0 3
Rs. 9	0 1	0 1	0 3
Rs. 10	0 1	0 2	0 3
Rs. 20	0 2	0 3	0 6
Rs. 30	0 2	0 5	0 10
Rs. 40	0 3	0 6	0 13
Rs. 50	0 4	0 8	1 0
Rs. 60	0 5	0 10	1 3
Rs. 70	0 6	0 11	1 6
Rs. 80	0 6	0 13	1 10
Rs. 90	0 7	0 14	1 13
Rs. 100	0 8	1 0	2 0

Note.—For amounts below Re. 1, annas eight and above should be considered a rupee for the purpose of calculating fees. Amount less than eight annas should be rejected.

[For instructions see next page.]

Instructions.

When fees are to be calculated under rule 136 (4) on an award in which several creditors are interested, the amount of the fee due on the total debt admitted or determined under section 18 to be owing to each creditor will be calculated separately, and the amount payable by the debtor and the respective creditors will next be determined.

If the total of the fees payable on the awarded amounts by (a) the debtor or (b) any creditor includes 6 pies, the 6 pies will be neglected.

The following example may be considered :—

Creditor.	Amount of debt.	Amount of fees payable.	Debtor's share.	Creditor's share.
	Rs.	Rs. a. p.	Rs. a. p.	Rs. a. p.
A	139	2 13 0	1 6 6	1 6 6
B	215	4 5 0	2 2 6	2 2 6
C	63	1 4 0	0 10 0	0 10 0
D	18	0 6 0	0 3 0	0 3 0
E	71	1 6 0	0 11 0	0 11 0
F	10	0 3 0	0 1 6	0 1 6
			5 2 6	

Debtor would pay the sum of column 4, i.e., Rs. 5-2-6 or Rs. 5-2 and the creditors the amount shown in column 5: A Re. 1-6, B Rs. 2-2 and F ana 1.

Process-fees.

Article 680—

(2) *Fees chargeable in Civil and Revenue Courts in Bengal and Assam.*

Nature of process.	Where the suit in which process issued is valued at over Rs. 1,000.	Where the suit in which process issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	Where the suit does not exceed Rs. 50 in value.
1	2	3	4
Article 1.	Rs. a. p.	Rs. a. p.	Rs. a. p.
In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document, one fee.	2 0 0	1 0 0	0 8 0
When such persons are more than four in number, then the fee abovementioned and an additional fee as mentioned in the table for every such person in excess of four.	0 8 0	0 4 0	0 4 0
<i>Note 1.</i> —A single process-fee is payable where not more than four persons have to be served whether all of them live in the same village or not.			
* * * *			
<i>Note 3.</i> —A single process-fee is payable where a major defendant has to be served with a process in his personal capacity and also with a process as guardian of a minor defendant.			
Article 2.			
In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four, one fee.	2 0 0	1 0 0	..
When there are more than four such persons, then the fees abovementioned for the first four, and an additional fee as mentioned in the table for every one in excess of that number.	0 8 0	0 4 0	..
In every case falling within column 4 in which personal or substituted service of any process on any persons who are not parties is required, for each person to be served.	..	..	0 4 0
<i>Note.</i> —No process-fee is chargeable for summonses on witnesses made over for service to the party applying therefor.			

For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

683. (1) No fees shall be charged for fresh service or execution of processes in cases where the parties concerned are not in any way to blame for their being not served or executed.

685. (1) In the localities only where and for the periods during which travelling except by boat is impracticable, the fees chargeable for the service of processes shall be increased by such percentage not exceeding 25 per cent. as may be necessary to cover the additional cost of boat-hire or ferry-toll for journey in watery areas. The percentage of surcharge over the fees ordinarily leviable should be reduced when the realisation of the higher amount is found to exceed the additional cost incurred.

Instructions.

Where there are several creditors interested in the proceedings, the amount on which the process fee is to be calculated under the above table will be not the total of all the alleged debts but the amount of the individual debt in regard to which the witness is to give evidence or which is claimed by the creditor concerned (or admitted by the debtor, as the case may be) to be owing to such creditor.