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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th March 1875 :—

WE, the undersigned Members of the Select Committee to which the Bill for consolidating and amending the Laws relating to the Procedure of the Courts of Civil Judicature in British India was referred, have the honour to report that we have considered the Bill and the papers noted in the appendix and received since April 1865, the date of the presentation of the last report.

1. This Bill has now been before the Council for nearly eleven years. Without having been formally introduced, it was published in 1864. It was introduced and referred to a Committee in the following November. An amended draft was published in April 1865, sent home to the Secretary of State in Council, and by him referred to the Indian Law Commissioners. They were of opinion that the project of consolidation should be deferred, and that it would be better to amend the Code by successive enactments as occasion might demand. The Secretary of State in Council, in his despatch of the 25th February 1867, expressed his concurrence in that opinion.

2. In consequence, the work was broken off. But since the correspondence above referred to, there have been more changes in the law, each tending to make some portion of the existing Code inapplicable to present circumstances. Besides the modifications effected by local Acts, the General Clauses Act of 1868, the Prisoners' Testimony Act of 1869, the General Stamp Act of the same year, the Court Fees' Act of 1870, the Limitation Act of 1871, the Evidence Act of 1872, the Criminal Procedure Code of 1872, the Oaths Act of 1873, have all had this effect to a greater or less extent. And every portion of the Code which becomes useless has, unless it is struck away, the effect of distracting, if not of misleading those who resort to it.

3. Again, there has now been a much larger number of decisions, which show either some inconvenience in the rules of the Code, or some ambiguity of expression or absence of direction which has given rise to disputes that it is convenient to settle. To a certain extent these matters are settled by judicial decisions. But the decisions, however well they may interpret the language of the Code, do not always lay down the rule which is most beneficial to suitors. And even in the more frequent instances where the decision lays down the best rule, it is often convenient to embody it in the written law.

4. The Government of India has recently decided to make some amendments in the law relating to the execution of decrees. We have embodied the provisions necessary to give effect to this decision; and we have also endeavoured to render more efficient the provisions of the Code which relate to execution-debtors unable to pay their debts.

5. Still the great bulk of the Code remains intact, and so, except by re-arrangement, we propose to leave it. What we have done is to attempt a clearer and more methodical arrangement of the different parts and clauses of the Code than is now the case; to embody in it a number of judicial decisions, some incorporated in the substance of the enactments, some by way of explanation, and some by way of illustration; in one or two instances to lay down rules more generally convenient than those which have been decided to result from the present wording of the Code; to supply some forms of proceeding which may be useful to suitors; and to add a few provisions, some of which are borrowed from the Rules of the High Court of Calcutta, and others from the New York Civil Procedure Code.

6. In re-arranging the Code we have first followed the course of an ordinary suit from the moment that the plaintiff determines to sue, until he obtains execution of his decree. Incidental proceedings (as, for example, when either party dies), suits in particular cases, provisional remedies (such as interlocutory injunctions) and special proceedings are dealt with in subsequent and separate Parts. If an unsuccessful litigant wishes to present an appeal, or to have a judgment reviewed, he will find the law on these subjects in Parts dealing respectively with appeals and reviews. References to the High Courts are also separately dealt with, and the special Rules relating to the Courts established under 24 & 25 Vic., c. 104, are placed in a Part by themselves. The new Code is thus divided into ten Parts relating respectively to—

I.—Suits in general.
II.—Incidental Proceedings.
III.—Suits in particular cases.
IV.—Provisional Remedies.
V.—Special Proceedings.
VI.—Appeals.
VII.—Review of Judgment.
VIII.—References to the High Court.
IX.—Special Rules relating to the Charter High Courts, and
X.—Certain miscellaneous matters.

7. The substantial changes and additions which we have made in and to the Draft of 1865 will be conveniently specified under the Part to which each belongs. But first we have to notice the preliminary sections.

PRELIMINARY.

Section 1.—The local extent of the Bill is declared to be the whole of British India, except the Scheduled Districts as defined in Act XIV. of 1874.

Section 2, *Interpretation-clause.*—Here are omitted several definitions, some of which have been rendered unnecessary by the General Clauses Act, I. of 1868, and others appear to us to be useless. On the other hand, we have inserted definitions of 'Pleader,' 'Foregin Court,' 'Foreign Judgment.' We have also defined 'cause of action' and 'material part of the cause of action,' in accordance with the judgment of Sir A. Bittleston in *DeSouza* v. *Coles*, 3 Mad. 384.

Section 3, *and Schedule I.*—We have omitted from the repealing schedule all the Regulations relating to Civil Procedure which, since 1865, have been repealed, and we have added several Acts relating to the same subject. It will be seen that Sections 15 and 192 of Act VIII. of 1859 are for the present to be left untouched. The former section relates to declaratory suits: the latter to specific performance. Both subjects will properly be dealt with by a Bill relating to specific and preventive relief, and the sections in question will then be repealed.

Section 4.—This applies to the new Code the references in previous Acts to Act VIII. of 1859 or 'the Code of Civil Procedure,' and saves the Oudh Civil Courts Act of 1871, the Punjáb Appeals Act of 1873, and the Burma Courts Act of 1875.

PART I.—OF SUITS IN GENERAL.

This Part is intended to deal with litigation in the simplest case, from the time that the plaintiff decides on suing and has to select his *forum* to the time when, having obtained a decree, he proceeds to execute it. It is divided into eighteen chapters relating to the following subjects:—

I.—The jurisdiction of the Courts and *res judicata*.
II.—The place of suing.
III.—Parties, their appearances, applications and acts.
IV.—The frame of the suit and the form of the plaint.
V.—The institution of suits.
VI.—Service of summons on the defendant.
VII.—The appearance of the parties and the consequence of non-appearance.
VIII.—Written statements.
IX.—The examination of the parties at the first hearing.
X.—The admission, inspection, production, and impounding of documents.
XI.—The settlement of issues.
XII.—The disposal of the suit at the first hearing.
XIII.—Adjournments.
XIV.—Summoning witnesses.
XV.—Examination of parties and witnesses.
XVI.—Judgment and decree.
XVII.—Costs.
XVIII.—Execution of decrees.

CHAPTER I.—OF THE JURISDICTION OF THE COURTS AND *Res Judicata*.

Section 10.—This lays down the law as to *Lis Pendens*, and contains an explanation declaring that the pendency of a suit in a foreign Court does not preclude the Courts of British India from entertaining a suit founded on the same cause of action.

Section 13.—This deals with *res judicata*, and incidentally with foreign judgments. Like section 6 of the Bill of 1865, it is, to a large extent, founded on the definition in Livingston's Code of Evidence. We have thought it desirable to add a number of illustrations, likely, we hope, to facilitate the comprehension of this most difficult head of law. As *res judicata* is not a plea to the jurisdiction, but a plea in bar, the place of this section may be objected to. But the circumstance that the corresponding section (2) of Act VIII. of 1859 stands in the forefront of the present Code, and the convenience of having so important a clause in a prominent position, seem to us in this instance to outweigh considerations of logical arrangement.

CHAPTER II.—OF THE PLACE OF SUING.

Section 15 specifies the suits whose forum is fixed with reference to the situation of the subject-matter. Such are suits relating to immoveable property and suits for moveables which have been distrained or attached. An exception is made in the case of suits to obtain relief respecting land where (as in the case of specific performance of a contract of sale) the relief sought can be obtained through the personal obedience of the defendant. Such suits may be brought either in the Court which has jurisdiction over the land or in the Court which has jurisdiction over the person of the defendant.

Section 16 (the lattter part of section 10 of the Bill of 1865 and section 61) deals with the suits to be instituted where the defendant resides, or where the cause of action arose. The principal changes which we have made are these :—Where there are several defendants, only some of whom reside, &c., within the local limits of the Court's jurisdiction, we think that the suit should not be instituted in the Court unless either (*a*) the leave of the Court is given, or (*b*) the non-residents acquiesce.

We have framed two sections (17, 18) to provide for the case of a suit being instituted in a Court within whose jurisdiction only part of the cause of action arose, and where all the defendants do not reside. In such a case we think that any defendant should be allowed to move the Court to stay proceedings ; and that if the Court thinks that justice is more likely to be done by the suit being instituted in another Court, it may stay proceedings either finally or till further orders. In such case of course the plaintiff should not pay a second Court-fee, and the interval between the institution of the suit and the date of staying proceedings should be excluded in computing the period of limitation applicable thereto. For this, section 19 provides.

Section 20.—This declares that suits for actionable wrongs may be brought either where the wrong is committed or where the defendant resides.

CHAPTER III.—OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

Sections 27—31 are new, and contain rules as to parties, their joinder, non-joinder, mis-joinder, founded to some extent on the New York Code, sections 117, 118, 119, 120.

Section 34.—Here we have settled a moot point by declaring that a partner is not, as such, a 'recognized agent.'

Sections 40 *and* 41—Here we have authorised the Court (*a*) to make one of several plaintiffs a defendant ; (*b*) to strike out of the plaint the name of a person improperly made a party ; (*c*) to stay proceedings against such a person.

CHAPTER IV.—OF THE FRAME OF THE SUIT AND THE FORM OF THE PLAINT.

Section 42 declares that every plaint shall, as far as practicable, be so framed as to afford ground for a single decision upon the whole subject in dispute.

Sections 44 *and* 45 deal with the subject of multifariousness.

Section 49, as to the particulars to be contained in the plaint. Here we have added some explanations to indicate that the plaint must shew (*a*) that where the plaintiff sues in a representative character, he has taken the steps necessary to enable him to sue ; (*b*) that the defendant is, or claims to be, interested in the subject-matter, and that he is liable to be called on to answer the plaintiff's demand. We have also provided that in money-suits the plaint should, as far as practicable, state the amount sued for.

Section 52.—Here we have explained that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Section 54.—We have provided for rejecting the plaint when it appears therefrom that the suit is barred by any positive rule of law.

Section 55 provides (in accordance with a Circular Order of the High Court, Fort William) a procedure (*a*) on rejecting, (*b*) on returning, a plaint.

Section 57 provides, in accordance with another Circular of the same High Court, for endorsing a memorandum of documents filed by the plaintiff along with the plaint.

Section 59 (=Act V. of 1866, section 14,) deals with suits on lost negotiable instruments.

Section 67 (=section 79 of the Bill of 1865, section 43 of Act VIII.,) provides that the summons to appear and answer shall order the defendant to produce 'documents containing evidence relating to the merits of the plaintiff's case,' and not 'documents of which the plaintiff demands inspection.'

CHAPTER VI.—SERVICE OF SUMMONS ON THE DEFENDANT.

Section 81.—In the Presidency Towns we have provided that the Courts to which Mofussil summonses are send for service shall be the Courts of Small Causes.

CHAPTER VII.—OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

Our changes in this matter are merely verbal.

CHAPTER VIII.—OF WRITTEN STATEMENTS.

Section 103.—We have added words to shew that the Court shall deal with recorded statements as if given in evidence.

Section 105, as to set-off.—We have amended and illustrated this section, which represents section 121 of Act VIII. of 1859. As now altered, it applies to any suit for the recovery of money; provides that in the claim of the defendant against the plaintiff, the parties must fill the same character as they fill in the plaintiff's suit, and declares that the sum claimed to be set-off must be ascertained and legally recoverable, and that the set-off must be claimed at the first hearing and not afterwards, except with the permission of the Court.

Section 106.—We have provided that a party wilfully disobeying the Court's requisition of a written statement, shall be liable to the penalties provided by section 176 of the Penal Code.

Section 108.—Here we have added a clause declaring that persons exempted from atttendance in Court are not exempted thereby from subscribing and verifying written statements.

CHAPTER IX.—OF THE EXAMINATION OF THE PARTIES AT THE FIRST HEARING.

We have left this subject untouched.

CHAPTER X.—OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

Section 113.—This provides that either party may exhibit to the other any document material to the suit, and request an admission in writing of its genuineness. The party refusing to give the admission is chargeable with the expense of proving its genuiness, unless the Court thinks there were good reasons for the refusal. A similar clause is contained in the Common Law Procedure Act, 15 and 16 Vic., cap. 76, sections 117, 118. Doubts have been expressed as to the policy of enacting such a clause in India, and we hope to receive the opinions of competent authorities on the matter.

Section 114 relates to inspection (which implies production) of documents. It represents sections 71 and 157 of the Bill of 1865; sections 40 and 107 of Act VIII. But it provides for obtaining inspection and copies of documents only when they contain evidence relating to the merits of the suit or the defence therein.

Section 115, as to sending for official records and papers.—We have provided, in accordance with a ruling by Phear, J., (1 Ind. Jur. N. S. 283) that applications under this section must be supported by an affidavit showing how the record or paper is material.

CHAPTER XI.—OF THE SETTLEMENT OF ISSUES.

Section 127.—We have here explained the term 'issues,' and provided that, when issues both of fact and of law arise in the same suit, and the case may be disposed of on the issues of law only, those issues may be tried first.

Section 128.—To the materials from which issues may be framed, we have added the contents of documents produced by either party.

Section 130.—We have here expressly empowered the Court, at any time before passing a decree, to strike out any issue appearing to be wrongly framed or introduced. This is in accordance with a ruling of the High Court at Fort William (3 Suth. W. R. 147, 150.)

CHAPTER XII.—DISPOSAL OF THE SUIT AT THE FIRST HEARING.

Section 135.—We think that where the summons has been issued for the settlement of issues only, the judgment should not be pronounced unless all the parties are present and none of them object. The introduction of a clause to this effect is the only change that we have made in reference to this subject.

CHAPTER XIII.—OF ADJOURNMENTS.

Section 138.—We have here slightly enlarged the discretion of the Court as to costs occasioned by adjournments.

CHAPTER XIV.—OF SUMMONING WITNESSES.

Section 150.—We have here revived the provisions of the repealed Act XIX. of 1853, section 28, as to fines on witnesses failing to appear.

Section 154.—We have added an explanation to show that, before ordering the apprehension of a person summoned to give evidence as a witness, there must be reason to believe that he has no lawful excuse for failing to comply with the summons; and we have explained (section 155) that 'lawful excuse is such an excuse as, under the Evidence Act, justifies a refusal to give the evidence.

Chapter xv.—Of the Examination of the Parties and Witnesses.

Section 163.—We have provided that nothing in this section (which empowers the Court to pass a decree against a party who improperly refuses to attend to give evidence) shall enable the Court to decree a claim which, on the face of the record, is not warranted by law.

Section 165.—This expressly provides that the rules as to witnesses shall apply to a party summoned as a witness.

Chapter xvi.—Of Judgment and Decree.

Section 186.—We have here declared that the decree shall agree with the judgment, and empowered the Court to amend the former, if found to be at variance with the latter.

Section 191, as to decrees in suits for land. We have here defined 'mesne profits' in accordance with a decision of Hobhouse, J., reported in 8 Suth. C. R. 104, and with a view to ensure the speedy execution of such decrees, we have precluded the Courts from giving mesne profits for more than one year from the date of the decree.

Section 193 deals with administration-suits, a subject wholly untouched by the Bill of 1865 or the present Code. The Court, before making its final decree, will order such accounts and enquiries to be taken and made and give such order and directions as it thinks fit. Forms of the preliminary order and the final decree will be found in Schedule IV.

Section 194 authorises the Court, in suits for dissolution of partnership, to make preliminary orders fixing a day for the dissolution, appointing a Receiver of the partnership-asserts and directing accounts to be taken. This subject is also untouched by Act VIII. of 1859 or the Bill of 1865. Forms of the preliminary order and the final decree will be found in Schedule IV.

Chapter xvii.—Of Costs.

Section 198.—We have here provided that the want of jurisdiction to try the case is no bar to the exercise of the power to give costs.

Costs will, as a rule, follow the event. But when the Court otherwise directs, we think that it should state its reasons in writing.

We have been in doubt whether it is well to attempt here to lay down any rules about costs. There is no question that, in the vast majority of contested cases, costs should follow the event, but there are cases in which litigation is resorted to without cause, and the blame of it rests with the party who gets the decree. In such cases the winning party may fairly be left to bear his own costs, or even, where he is much to blame, to pay the costs of the loser. In most of these cases, however, the suit is immediately met by proper concessions on the part of the defendant, as *e. g.*, by payment into Court, in which case we have tried to lay down some rule about costs. See below sections 367 and 368.

The practical question is, whether it is likely to be useful to the Courts if the Code contains something applicable to contested cases: and the point is one on which we should be glad of opinions from those who have had occasion to study it.

Section 201.—This provides that there shall be no appeal or re-hearing on a question of costs, except when it distinctly appears on the face of the proceedings, either that the costs are payable out of or chargeable on some property, or that the mode in which they have been given is inconsistent with some enactment.

Chapter xviii.—Execution of Decrees.

On this portion of the Code more questions have been raised and more cases decided than on any other. Our amendments have accordingly been rather numerous. But with two exceptions—the clauses in section 218, as to applications to execute decrees for the payment of money or delivery of property, and the sections (314-328) relating to insolvency—they will be found not to make any great change in substance. We proceed to specify these amendments omitting mere changes in wording and arrangement.

Section 202.—We have here touched on the mode of executing decrees for the delivery of a share of the dwelling-house of an undivided Hindú family (2 Wym. Rep. 217).

Section 203.—Here we have embodied a ruling of the High Court, Fort William (1 Ind. Jur. N. S. 307), that in a suit for the restitution of conjugal rights a decree for the plaintiff shall be declaratory only and shall be enforced in case of disobedience only by attachment.

Section 215.—We have here made it clear that property liable to attachment must be saleable, and in accordance with decided cases, we have expressly exempted (*a*) necessary wearing apparel, (*b*) books of account, (*c*) mere rights to sue, (*d*) the right to perform the service of an idol, (*e*) stipends allowed to pensioners of Government, (*f*) salaries of servants of Government, (*g*) an expectancy of succession by survivorship, and (*h*) a right to future maintenance.

Section 218.—We have given the Court a discretionary power to refuse execution at the same time against the person and the property of the judgment-debtor. Sir Barnes Peacock (8 Suth. C. R., 282, 284) held that the Court had the power, but it is well to give it expressly.

We here propose to make the following important change in the law as to applications to execute decrees for the payment of money or the delivery of other property :—

Where an application to execute such a decree has been made and granted, no subsequent application to execute the same decree shall be granted unless the Court is satisfied that, on the former application, due diligence was used to procure complete execution ; and no such subsequent application shall be made after the expiration of twelve years from any of the following dates :—

(*a*) the date of the decree sought to be enforced : or

(*b*) where the decree directs payment or delivery by instalments, the date of the default in paying or delivering the instalment in respect of which the applicant seeks to enforce the decree : or

(*c*) where the decree is for money and the decree-holder and the judgment-debtor have entered in to an agreement in writing that the amount decreed, with interest, shall be discharged by such instalments as if duly paid will discharge the said amount and interest at some time within thirty years from the date of the decree, the date of the default in paying the required instalment :

Provided that a decree-holder may apply for execution of his decree after the expiration of the term of twelve years where the judgment debtor has by a fraud or force prevented execution at sometime within twelve years immediately before the date of the application.

Section 220.—Here, in accordance with another ruling of Sir B. Peacock's (9 Suth. W. R. 232), we have declared that when a decree against several persons has been transferred to one of them, he shall not be entitled to have it executed against the others. His remedy is a suit for contribution.

In *section* 221.—We have here provided that every transferree of a decree shall hold it subject to the equities (if any) which the judgment-debtor might have enforced against the transferor.

Section 222 deals with cross-decrees. We have provided for the *casus omissus* of the two sums decreed being equal, and we have added explanations in accordance with the rulings reported in 6 Suth. F. B. 72, and 7 Suth. 535. In section 223 we have dealt with the subject of cross-claims under the same decree.

Section 225 treats of applications for execution against the representatives of a deceased judgment-debtor. We have expressly provided that such representative shall be liable to the extent of the property of the deceased which has come to his hands and has not been duly disposed of.

In *section* 251, as to applications by a person, other than the defendant, who is dispossessed of property in execution of a decree, we have declared that, in hearing such applications, the Court shall confine itself to the grounds specified in the section, and that no such application shall be made by a person to whom the defendant has transferred the property after the institution of the suit in which the decree is made (6 Suth. 148).

Section 253.—To this section (as to attachment of property in execution of a decree for money) we have added an explanation showing that a decree for mesne profits or any other matter the amount of which in money is to be subsequently determined, is a 'decree for money' within the meaning of this section.

In *section* 254 we have removed a doubt as to the powers of a person executing a general attachment of moveables who has gained access to a house.

To *section* 258 we have added a clause shewing how a prohibitory order is to be notified where the debt to be attached is due by a public company to one of its servants.

In *section* 264 we have provided that private alienations of attached property during the continuance of the attachment shall be void as against all claims enforceable under the attachment, and not merely as against the party on whose application the attachment was made.

Section 268.—We have here provided that when the Court grants a certificate authorizing the judgment-debtor to sell, mortgage, or lease land attached, the year mentioned in section 233 (after which he may be called on to show cause why the decree should not be executed) shall be computed from the date of the expiry of the certificate.

Section 270.—We have here specified with more particularity than is done by the Bill of 1865, section 391, the liabilities of managers of attached property.

Section 272.—Here we have given power to the Local Governments, with the sanction of the Government of India, to make special rules for any territory, imposing conditions in respect to the sale of land in execution of decrees for money.

Section 274.—We have added a clause prohibiting execution-sales on holidays or any other day on which the Court is closed (3 Suth. Misc. 24.)

Section 276.—It has been held that the Collector is a mere ministerial officer under the corresponding section of the present Code, and that he has no discretion as to postponing sales, fixing an upset price, or any other matter affecting the substance of the sale. And it is suggested that the Collector ought to have discretion in such matters, or even some larger power to make arrangements for payment of the debt by some means short of an absolute sale of the land. The point is one on which we should be glad of opinions from those who have been led to study it. It will be remembered that, in section 272, we propose to give power to the Executive to make special rules on the subject of sales of land.

Section 277.—Connected with this section is a point of considerable difficulty. The corresponding section of the Code, namely, section 249, directs that nothing is to be sold but the right, title and interest of the defendant in the property described as put up for sale. It would seem that the seller could not, if he wished, sell anything more specific. And it has been decided with reference to section 258 of the Code that if the judgment-creditor makes a mistake and puts up for sale the property of an entire stranger, and the purchaser concludes the purchase under that mistake, he cannot, when ousted by the true owner, recover his purchase-money, but that the judgment-creditor who has sold him nothing is entitled to keep the money. The combination of these two rules seems calculated to introduce a speculative character into execution-sales, which must be very damaging to the property sold. We understand that in fact it is very common for land to be sold at an undervalue at such sales. To avoid this mischief we have proposed two alterations. In this section, 277 of the present draft, we say that the best practicable description shall be given of the property to be sold. And in section 293, corresponding with section 258 of the Code, we say that the purchaser may recover his purchase-money if the property put up for sale is that of a stranger and he is ousted from it. We shall be glad to know of those who are familiar with the subject whether the fact really is that property is apt to be sold at an undervalue in execution-sales, and if so, to what cause they impute it, what they think of the alterations now proposed, and whether any remedy has occurred to them by which more security can be given to purchasers with the view of obtaining better prices for land.

In *section* 283, as to the confirmation of an execution-sale, for 'absolute' we have substituted 'absolutely binding on the vendor.'

Section 287.—Where the purchaser fails to make the requisite deposit or to pay the balance of the purchase-money, we have provided that the deficiency of price (if any) on the re-sale, and the expenses of such re-sale, shall be certified to the Court, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules for the execution of money-decrees.

Section 288.—We have here provided (in accordance with the practice of the Court of Chancery) that the decree-holder shall not, except with the express permission of the Court, purchase the property sold in execution of his decree.

Section 290, 291.—In case of irregular sales of moveables, we have provided that the person injured thereby may not only sue the person injuring him, but may also sue for the recovery of the specific property and for compensation in default of recovery. And in case of such sales of immoveable property, we have declared that the purchaser may apply to the Court to set aside the sale on the ground that the person whose interest in the property purported to be sold had no such interest (see 5 Bomb. O. C. J. 83).

Section 294.—We have re-drawn this section so as to make it clear that a certificate of sale of land is, for the purpose of the stamp-law, to be regarded as a conveyance.

Section 305.—We have here made some additions to the law as to payment out of assets in execution of a decree. We have declared that out of such assets—whether realised by sale or otherwise—the decree-holder on whose application the property was first attached is entitled to be first paid, provided that the attachment was in execution of a money-decree then capable of being completely executed (21 Suth. 66). We have expressly saved the rights of the Crown, and we have declared that if any of such assets be paid to a person not entitled to receive them, the rightful owner may compel a refund (9 Suth. 514). Where the judgment-debtor is declared an insolvent, the provisions as to priority contained in this and the following section will be overridden by the rules as to distribution prescribed by section 325.

Section 307.—When the Court finds upon the application of the holder of a decree, that any other decree under which property has been attached was improperly obtained, we have, in addition to the powers given by section 432 of the Bill of 1865 (=section 272 of Act VIII.), authorised the Court to stay the proceedings and refer the parties to a regular suit.

As to discharge from imprisonment under a decree, we have provided that a defendant once discharged shall not be re-arrested under that decree.

The most important alterations in this part of the Bill will be found in sections 314 to 328, corresponding with sections 433 to 436, and 444 to 450 of the Bill of 1865, and sections 273, 280, 281 of Act VIII. and section 8 of Act XXIII. of 1861. They provide an insolvent law for persons arrested or imprisoned in execution of money-decrees. The chief changes which we have made are these: (*a*) the Court (*i.e.*, the District Court or such other Court as the Local Government may invest with the powers of a District Court under these sections) may cause a copy of the would-be insolvent's application to be served, not merely on the decree-holder, but also on any other of his creditors; (*b*) the Court may also grant leave to any of the creditors to bring forward evidence to shew that the applicant is not entitled to be declared an insolvent; (*c*) the Court may declare the applicant an insolvent and appoint a Receiver in whom all the insolvent's property will vest (section 321); (*d*) the Receiver will then collect the assets, and on his certifying that the insolvent has done all in his power for that purpose the Court may discharge the latter. The Court will then frame a schedule of creditors and their respective debts (section 324). Creditors not mentioned in the schedule may apply to have their names inserted, and creditors mentioned therein may apply to have the schedule altered; and the Receiver will, under the direction of the Court, convert the assets, discharge any debts or fines due by the insolvent to the Crown, distribute the balance rateably among the scheduled creditors without any preference, and pay the surplus (if any) to the insolvent.

As to the effect of the discharge, we have made no substantial change, except that the insolvent will not be liable to be arrested or imprisoned on account of *any of the scheduled debts*, not merely (as provided by section 449 of the Bill of 1865) on account of the decree under which he was imprisoned, and that his property shall be liable to attachment until the decrees against him held by the scheduled creditors either are fully satisfied or become by lapse of time incapable of being executed.

We have considered whether it would be desirable to extend the law so as to enable a person not arrested or imprisoned in execution of a decree to apply to be declared an insolvent. But, on the whole, we think that this change would be too great for the machinery at present available, in many parts of India.

Section 331.—We have here provided for the execution of Mofussil decrees within the Presidency Towns.

PART II.—Of Incidental Proceedings.

The second Part of our draft deals with the incidental proceedings which take place (*a*) on the death, marriage or insolvency of parties to a suit; (*b*) on the withdrawal and adjustment of suits; (*c*) on payment into Court; (*d*) on requiring security for costs; (*e*) on setting aside decrees by default and *ex parte*, and (*f*) on the issue of commissions.

Chapter xix.—Of the Death, Marriage and Insolvency of Parties.

Section 358.—We have here inserted an explanation to shew that a certificate of heirship, or a certificate to collect debts, does not of itself constitute the holder the legal representative of the deceased.

Chapter xx.—Of the Withdrawal and Adjustment of Suits.

Section 364.—We have limited the power of the Court to permit withdrawal with liberty to sue again, to cases when the suit must fail by reason of some formal defect; and we have declared that nothing in this section shall authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Chapter xxi.—Of Payment into Court.

Section 368.—We have here altered the Bill of 1865 in accordance with the following views:—If the plaintiff accept the amount paid-in only as satisfaction in part of his claim, he may prosecute his suit for the balance; but if the Court decides that the payment has been a full satisfaction, the plaintiff should pay the costs of the suit. If, however, the plaintiff accepts the amount as satisfaction in full, the Court should pass judgment accordingly; and in awarding costs it should consider which of the parties is most to blame for the litigation.

Chapter xxii.—Of requiring Security for Costs.

We have made no change in this chapter, which corresponds with sections 63 and 64 of the Bill of 1865, sections 34 and 35 of Act VIII. of 1859.

Chapter xxiii.—Of setting aside Decrees by Default and ex parte.

This chapter corresponds with section 172 to 175 of the Bill of 1865, section 119 of Act VIII. of 1859. Here, too, we have made no change.

Chapter xxiv.—Of Commissions.

This chapter deals with (*a*) commissions to examine witnesses; (*b*) commissions for local investigations; (*c*) commissions to investigate accounts, and (*d*) general provisions applicable to all such commissions. Under (*a*) we have inserted a section (385) to provide for the case of the witness being in jail, and under (*d*) we have declared that the commissioner shall take down all questions and answers and make a note of the objections (if any) to the admissibility of evidence. We have made no other substantial change.

PART III.—Of Suits in particular cases.

Part III. deals with suits in particular cases, and herein with (*a*) suits by paupers; (*b*) suits by or against Government or Government servants; (*c*) suits by or against Native or Foreign rulers; (*d*) suits by or against corporations and companies; (*e*) suits by and against trustees, executors and administrators; (*f*) suits by or against minors and persons of unsound mind; (*g*) suits by infirm persons and women; (*h*) suits by or against military men; (*i*) suits by stakeholders, otherwise called interpleader-suits.

Chapter xxv.—Suits by Paupers.

The principal additions which we have here made are as follows:—We have provided that the Court shall hear any argument which the parties may desire to offer on the question whether, on the face of the petition and the evidence, the petitioner is or is not disqualified from suing

as a pauper. We have declared that the pauper shall not be exempt from paying (*a*) the expense of serving process, (*b*) expenses of witnesses, (*c*) the duty and penalty payable on unstamped or insufficiently stamped instruments which he produces; and we think that, if he resides out of British India, he should not be exempt from giving security for costs. We have provided that if he succeeds he shall have such costs as the Court thinks fit, and that if he fails the Court may order him to pay costs to the defendant, and further, if the suit is frivolous or vexatious, punish him with a small fine and a month's imprisonment. Lastly, we have introduced a section (411) as to dispaupering, a subject ignored both by the Bill of 1865 and by Act VIII. of 1859.

CHAPTER XXVI.—SUITS BY OR AGAINST GOVERNMENT OR GOVERNMENT SERVANTS.

The only change that we have here made is in section 427 (= section 334 of the Bill of 1865.) We think that, where the officer against whom execution of a decree against Government is applied for neglect to satisfy the decree, the Court, whether it be the High Court or subordinate thereto, should report directly to the Local Government; and we think that the period after which execution may issue on such unsatisfied decree should be computed from the date on which the report reaches Government.

CHAPTER XXVII.—SUITS BY OR AGAINST NATIVE AND FOREIGN RULERS.

CHAPTER XXVIII.—SUITS BY OR AGAINST CORPORATIONS AND COMPANIES.

In neither of these chapters have we made any change calling for notice.

CHAPTER XXIX.—SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Section 431.—We have here somewhat modified the provisions as to executors, administrators and trustees, found in section 9 of the Bill of 1865. We have provided that, in all suits concerning property vested in a trustee, &c., he shall represent the beneficiaries, and that, unless the Court otherwise direct, they need not be made parties.

Where there are several executors or administrators, we have provided, in accordance with the practice of the Court of Chancery, that (except in the case of executors who have not proved as executors, and administrators who are beyond the local limits of the jurisdiction) they must all be made parties to a suit against one or more of them.

We have also provided that, unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXX.—SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

We have substituted this chapter (which is substantially taken from the rules of the High Court at Fort William, dated 10th June 1874) for the somewhat meagre section (43) of the Bill of 1865, relating to suits by or against infants. The persons of unsound mind to whom it applies (section 462) do not include those who have been found so by inquisition.

CHAPTER XXXI.—SUITS BY INFIRM PERSONS AND WOMEN.

We have made no change here.

CHAPTER XXXII.—SUITS BY AND AGAINST MILITARY MEN.

The only addition here made is an explanation of the term 'commanding officer' used in section 464 (= section 37 of the Bill of 1865, section 19 of Act VIII. of 1859). In this we have followed the Indian Articles of War, Act V. of 1869.

CHAPTER XXXIII.—INTERPLEADER.

This chapter is altogether new. It shows, section 469, when an interpleader suit may be instituted; section 470, what the plaint should state; section 471, when the thing claimed should be paid into Court; section 472, the procedure at the first hearing; section 473, when tenants or agents may compel their landlords or principals to interplead; section 474, how the plaintiff's costs may be secured, and lastly, section 475, the procedure where a defendant in an interpleader suit is actually suing the stakeholder in another suit. We trust that this chapter will prove an efficient substitute for Act VIII. of 1841, which, accordingly, we propose to repeal.

PART IV.—PROVISIONAL REMEDIES.

By these we mean (*a*) arrest before judgment; (*b*) attachment before judgment; (*c*) temporary injunctions; (*d*) appointment of Receivers and Managers.

CHAPTER XXXIV.—OF ARREST BEFORE JUDGMENT.

CHAPTER XXXV.—OF ATTACHMENT BEFORE JUDGMENT.

We have left these provisions substantially untouched.

Chapter xxxvi.—Of Temporary Injunctions.

This chapter deals only with temporary, or, as they are sometimes called, provisional, injunctions. The subject of perpetual injunctions will more fitly be dealt with by a Bill relating to specific and preventive relief.

We have here inserted a section (495) to authorise the issue of temporary injunctions to restrain fraudulent removals of property pending a suit. We have provided (section 497) that, in all cases except those of great urgency, the Court shall, before granting an injunction, direct notice of the application for the same to be given to the opposite party. And we have declared (section 498) that an injunction directed to a corporation shall be binding on all its members and officers whose personal action it seeks to restrain.

Chapter xxxvii.—Appointment of Receivers and Managers.

To this chapter we have added a section providing that, when the subject-matter of a suit is capable of delivery, and any party admits that he holds it as a trustee for another party, or that it belongs to another party, the Court may order it to be deposited in Court, or delivered to the latter.

PART V.—Special Proceedings.

Part V. treats of the following special proceedings, namely, (*a*) reference to arbitration; (*b*) proceedings on agreement of parties; (*c*) summary proceedings on negotiable instruments.

Chapter xxxviii.—Reference to Arbitration.

The only substantial changes which we have made are in section 507, where we have provided that when once a matter is referred, the Court shall not deal with it in the same suit unless the reference be fruitless, in which case the Court may supersede the arbitration and restore the suit to the file; in section 508, where we have struck out the reference to an uneven number of arbitrators, and in section 520, where we have declared that an award remitted for reconsideration becomes void on the arbitrators' refusal to reconsider it, and that no award shall be valid unless made within the period allowed by the Court. In section 527 we have provided that the Court to which the application therein mentioned must be made shall be the Court of the lowest grade having jurisdiction over the whole matter to which the award relates.

Chapter xxxix.—Of Proceedings on Agreement of Parties.

In section 531 we have provided that every such agreement shall be filed in the Court of the lowest grade having jurisdiction in the matter to which it relates. We have made no other change.

Chapter xl.—Of Summary Procedure on Negotiable Instruments.

This corresponds with Act V. of 1866, ss. 2—8. We have made only a few formal changes therein.

PART VI.—Of Appeals.

Part VI. treats of appeals. We first declare (s. 541) that, except as provided by the Code or by some other law for the time being in force, no appeal shall lie, and we then deal (chapter xlii.) with appeals from original decrees; chapter xliii.) with appeals from appellate decrees; chapter xliv.) with appeals from orders; (chapter xlv.) with pauper appeals, and lastly (chapter xlvi.) with appeals to the Queen in Council. It will have been observed that we have discarded the misleading terms 'regular appeals' and 'special appeals.'

Chapter xli.—Bar of Appeals not expressly permitted.

We have already mentioned this chapter, which corresponds with section 622 of the Bill of 1865.

Chapter xlii.—Of Appeals from original Decrees.

Section 547.—We think that the Court should not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of meeting the appellant's case on that ground.

Section 557.—We have here provided that the Appellate Court shall not stay execution of a decree which has been appealed against, unless irreparable injury may result to the appellant, if execution is not stayed, and unless the application is made without unreasonable delay. We have further empowered the Court, if it grant the application, to impose terms on the appellant.

Section 571.—Where an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him we have here provided for his obtaining a re-hearing in case of his having been prevented by sufficient cause from attending when the appeal was called on.

When the respondent gives notice of any objection to the decree which he might have taken by way of appeal, we have restricted him to raising questions between himself and the appellant. He should not, we think, be allowed to raise questions between himself and any other respondent or defendant.

In the section (573) relating to remand by an Appellate Court, we have provided that the Court of first instance may be directed, not only to investigate the suit on the whole merits, but also to try a particular issue, or to take certain specified evidence. When a case is remanded for the purpose of taking certain specified evidence, we think that the Court to which the case is remanded should take no other evidence in the case.

Section 575.—We have here provided for the re-settlement by the Appellate Court of defective issues.

Section 578.—When the Appellate Court frames issues and refers them for trial to the Court of first instance, we think that it should also have power to prescribe the manner in which the additional evidence should be taken and the points to which it should be confined.

Section 587.—When the decree appealed against is reversed, we have declared (in accordance with Sir B. Pecock's ruling in 1 Beng. A. C. 50) that the judgment of the Appellate Court shall state the relief to which the appellant is entitled.

Section 589.—Where the appeal is heard by two Judges, who differ in opinion on a point of law, we think that they should confer together, and that the case should be re-argued upon that point before one or more of the other Judges, and determined according to the opinion of the majority of the Judges before whom the point is argued, including the Judges who first heard the appeal. We have altered to this effect the corresponding section (533) of the Bill of 1865 (= Act XXIII. of 1861, section 23). Where the appeal is heard by more Judges than two, if their opinions are equally divided, we think (section 590) that the decree appealed from should be taken as affirmed, and that there should be no reference to the opinion of the senior Judge.

Chapter xliii.—Of Appeals from Appellate Decrees.

In view of the discussion which is pending on this subject, we have not thought it prudent to introduce any changes of principle here. But we wish to express our opinion that the effects of the present law are by no means satisfactory, because frivolous cases are thereby admitted to second appeal, important ones are excluded from it, and the High Courts are fettered by rigid rules in dealing with the cases which come up to them. We think it would be desirable to classify the suits which are admitted to second appeal rather by their importance than by the accident of their involving some question of law or practice. This would be in accordance with the proposals made in the pending Civil Appeals Bill for Bengal. The point is one on which we should be glad to receive opinions from the local authorities.

The only change which we have here made is the introduction of a clause (608) providing for the case of a change of the pleader who has signed the certificate that the grounds of appeal are reasonable.

Chapter xliv.—Of Appeals from Orders.

We have added to the list of appealable orders those made under section 17 for staying proceedings in a suit, orders made under section 111 or 112 where a party refuses to answer a question put by the Court or fails to appear, orders in insolvency-matters, orders as to paupers under section 409, and orders as to interpleader-suits.

Chapter xlv.—Of Pauper Appeals.

Here our changes have been merely formal.

Chapter xlvi.—Of Appeals to the Queen in Council.

This chapter reproduces the provisions of the recently passed Act VI. of 1874, which the Bill proposes to repeal.

PART VII.—Of Reviews of Judgment.

Part VII. deals with reviews of judgment. We think that the evidence on the discovery of which a review is obtainable should be, not only 'new,' but 'important' (7 Suth., 166); and strict proof should be given that such evidence was not within the applicant's knowledge (9) Beng. 187). We have made provisions to this effect in sections 644 and 648. We have declared (*a*) that a party who is not appealing may apply for a review notwithstanding the pendency of an appeal by some other party, (*b*) that a person who has preferred an appeal may abandon it and apply for a review, and (*c*) that, except on the discovery of such new evidence as aforesaid, application for a review of a judgment (other than that of a High Court) should be made to the Judge who delivered it.

PART VIII.—Of Reference to the High Court.

No change requiring notice has been made in this part of the Bill.

PART IX.—Special Rules as to High Courts.

Part IX. contains some special rules relating to the High Courts established under 24 & 25 Vic., cap. 104.

In section 664 we have introduced words to shew that such a Court may try suits in which *any* material part of the cause of action has arisen or *any* of the defendants dwell, &c., within the local limits of its ordinary original civil jurisdiction. We have also made it clear that the High Court has jurisdiction to entertain suits for land whether the land is situate wholly, or only in part, within the local limits. This is in accordance with the decision of the late Mr. Justice Norman in 3 Bengal O. C. 85, and with that of Mr. Justice Phear in 6 Bengal 686. The language of the charter of 1865, section 12, had given rise to some doubts on the subject.

In sections 682, 683 and 684 we have embodied the existing Rules of the High Courts at Fort William as to procedure in Admiralty, Testamentary and Intestate cases.

PART X.—Miscellaneous.

Part X. contains various miscellaneous provisions. In the sections (692—695) relating to exemption from personal appearances in Court, we have declared that *parda-nashins* shall not be exempted, from arrest in execution of civil process, and that when any person exempted from personal appearance claims his privilege and it is consequently necessary to examine him by commission he must pay the costs of that commission.

Of the four schedules, the first specifies the enactments proposed for repeal; the second, the sections of the proposed Code which will be applicable (*a*) to Mofussil Courts of Small Causes, (*b*) to Revenue Courts; the third mentions certain Bombay enactments which it is desirable not to affect; the fourth contains 173 forms, (*a*) plaints for breach of contract, (*b*) plaints for damages upon wrongs, (*c*) plaints in suits for special relief, (*d*) forms of summonses, (*e*) forms of registers of suits, memoranda, decrees, orders, notices, warrants, and certificates. Some of these we have ourselves framed: others are taken (with some changes) from the Schedule to the County Court Orders in Equity, framed under the 28th and 29th Vic., c. 99, and from the volume of forms published by the Commissioners appointed to frame the revised New York Code; others from Act VIII. of 1859, and the rest were framed by Mr. Broughton, late Recorder of Rangoon, and have stood the test of practice.

Having thus mentioned all the substantial additions which we have made to the Bill of 1865, we have now to specify the clauses of that Bill which we have struck out, with the reasons for each omission.

Clauses 11 *and* 12 provide that suits against Government (other than suits for land) shall be brought at the seat of Government. We think that such a provision would often cause great hardship to plaintiffs: and we have accordingly struck it out.

Eight clauses of the Bill of 1865, namely, 24 and 25, 133 and 134, 314, 315, 316 and 318, deal with the subject of specific performance of contracts. These relate to substantive law, and, if ultimately adopted, will come more fitly into the abovementioned Bill relating to specific and preventive relief.

Clause 26.—This relates to declaratory suits, and is reserved for the same Bill.

Clause 61.—Procedure where there are several defendants, some of whom dwell without the jurisdiction. This is substantially provided for by sections 16, 17 and 18 of our draft, and it is unnecessary to make a separate provision.

Clause 65.—Procedure in a suit for immovable property situate in different jurisdictions. This appears to be sufficiently provided for by sections 23, 24 and 25 of our draft (= sections 20, 21, 22 of the Bill of 1865).

Clause 120.—Procedure when defendant is about to leave India. This too seems to us fully provided for by our sections 476, 477, 478 (=sections 113, 114, 115 of the Bill of 1865).

Clause 146.—This relates to refunding half the stamp-duty on the plaint if the suit is compromised. The matter was considered and dealt with when the Court Fees' Act, VII. of 1870, was passed.

Clauses 193—196.—These also relate to stamp-duty, and the subject is sufficiently provided for by the Stamp Act, XVIII. of 1869.

Clauses 243—254, and clause 594 relate to questions respecting religion or custom. We do not think it necessary or expedient to legislate specially regarding this matter. The Evidence Act, I. of 1872, sections 13, 48 and 49, provides sufficiently for the solution of all such questions.

Clause 280 provides for the issue of a commission to examine witnesses who are neither within British India nor within an allied Native State. We think that this is sufficiently met by our section 382, which is equal to clause 279 of the Bill of 1865, and section 177 of Act VIII. of 1859.

Clauses 281, 282, 283 provide for commissions to examine persons in jail. This is provided for by the Prisoners' Testimony Act, XV. of 1869.

Clause 299 authorises the Court in certain cases to decide a suit on a sworn statement. Without giving any opinion on the policy of this provision, we would observe that the matter is sufficiently provided for by the Oaths Act, X. of 1873, sections 8—12.

Clause 312 provides that a copy of every decree for the recovery of a portion of immovable property with specified boundaries shall be sent to the District Registrar. The expediency of requiring the sending and registering of such copies was considered when the present Registration Act (VIII. of 1871) was passed, and was decided against.

Clauses 468—482 relate to the summary enforcement of claims on registered bonds. The expediency of having any such provisions in the law was decided against by the legislature when the present Registration Act (VIII. of 1871) was settled and passed, and nothing has since occurred to suggest that this decision should be reversed.

Clause 535 declares that if an appeal lies to a Court consisting of a single Judge, the appeal shall be heard and determined by such Judge. We have omitted this, as the matter is sufficiently provided for by our section 686 (= section 670 of the Bill of 1865.)

Clause 536.—We have omitted the greater part of this clause as being provided for by the Limitation Act, IX. of 1871.

Clause 597 prescribes the time within which special appeals shall be presented. We have omitted this clause also, as the matter is provided for by the Limitation Act.

Clause 608 relates to the stamp on a pauper's appeal and the time within which it must be presented. Both matters are already provided for—the one by the Stamp Act, the other by the Limitation Act.

Clause 624 limits the time within which applications for review must be made. This also is provided for by the Limitation Act.

Clause 636 relates to the extraordinary civil jurisdiction of the High Courts. It seems inexpedient to insert this in the Bill, for as to the High Courts established under 24 & 25 Vic., Cap. 104, the matter is provided for by the Letters Patent; and as to the other highest Civil Courts of Appeal (see Act I. of 1868, section 1, clause 11), the matter is, or ought to be, provided for by the local Acts under which they are established.

Clauses 638 and 639 refer to the stamps to be used in the High Courts. The matter is provided for by the Stamp Act and the Court Fees Act.

Clauses 664—667 relate to contempt in Court. This matter is sufficiently dealt with by Act X. of 1872, sections 435, 436, and 437, as regards all High Courts not established under 24 & 25 Vic., Cap. 104. For Courts established under that Statute no such provisions are needed.

Clause 680 is omitted, as the two Acts which it saves have been repealed.

We have thus described the changes which we have made in the Bill of 1865. We recommend that the Code, as now revised, should be published in the *Gazette*, and circulated to the Local Governments.

We have to request that gentlemen sending in suggestions will be kind enough to identify the draft Bill to which their suggestions relate by the Roman numeral printed on the outer sheet.

CALCUTTA; *The 8th March* 1875.

A. HOBHOUSE.
E. C. BAYLEY.
JOHN INGLIS.
R. A. DALYELL.
VIJAYARA'M RA'J, *of Vizianagram.*
D. FORSYTH.

APPENDIX.

From Commissioner, Chhattisgarh Division, No. 3087, dated 3rd August 1864, and enclosures.
„ Deputy Commissioner, Upper Godávari District, No. 1576, dated 8th August 1864, and enclosure.
„ Cantonment Joint Magistrate, Jabalpur, No. 170, dated 9th August 1864.
„ Deputy Commissioner, Ságar Division, No. 1599, dated 12th August 1864, and enclosures.
„ Assistant Commissioner, in charge of current duties, Ságar, No. 1600, dated 12th August 1864.
„ Deputy Commissioner, Mandlá, No. 1390, dated 13th August 1864.
„ Lieutenant T. Wakefield, Assistant Commissioner, No. 3364, dated 30th August 1864.
„ Extra Assistant Commissioner, Mandlá, No. 3360, dated 30th August 1864.
„ Commissioner, Jabalpur Division, No. 7285, dated 25th October 1864, and enclosures.
„ Assistant Commissioner, Dumoh, No. 1858, dated 14th November 1864.
„ Commissioner, Narbadda Division, No. 4027, dated 23rd November 1864, and enclosures.
„ „ Jabalpur Division, No. 8042, dated 16th December 1864, and enclosures.
„ „ Nágpur Division, No. 229, dated 10th January 1865, and enclosures.
„ Deputy Commissioner, Wardah, No. 191, dated 25th January 1865.
„ Under-Secretary to Government of Bombay, No. 211, dated 26th January 1865, and enclosures.
„ Judge, Small Cause Court, Nágpur, No. 300, dated 30th January 1865, and enclosures.
„ Assistant Secretary to Government, Madras, Legislative Department, No. 47, dated 18th February 1865, and enclosures.
„ Deputy Commissioner, Chanda, No. 219, dated 22nd February 1865, and enclosures.
Memorandum by Judicial Commissioner, Central Provinces (no date).
From Officiating Junior Secretary to Government, North-Western Provinces, No. 120A, dated 17th May 1865, and enclosures.
„ Vakíls' Association, Madras, dated 17th June 1865, and enclosure.
„ Officiating Junior Secretary to Government, North-Western Provinces, No. 168 A, dated 19th July 1865.
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 3288—287, dated 17th August 1865, and enclosures.
„ Acting Assistant Secretary to Government, Fort St. George, No. 341, dated 24th August 1865, and enclosures.
„ „ „ „ „ „ „ No. 359, dated 8th September 1865, and enclosures.
„ Secretary to Chief Commissioner, Oudh, No. 2930, dated 12th September 1865, and enclosures.
„ Vakíls' Association of Western India, dated 19th September 1865.
„ Assistant Secretary to Government, Fort St. George, No. 377, dated 2nd October 1865, and enclosures.
„ Secretary to Chief Commissioner, Oudh, No. 3193, dated 6th October 1865, and enclosure.
„ Officiating Junior Secretary to Government, North-Western Provinces, No. 213A, dated 27th October 1865, and enclosure.

From Under Secretary to Government of Bombay, No. 3981, dated 1st December 1865.
„ Honorary Secretary, British Indian Association, dated 8th February 1866.
„ Under Secretary to Government, North-Western Provinces, No. 120A, dated 6th April 1866.
Office Memorandum from Home Department, No. 1578, dated 6th June 1866.
From Under-Secretary to Government of Bombay, No. 1409, dated 28th April 1866.
Petition from Udeyrám Sahukár of Muzaffarnagar.
Endorsement Home Department, No. 3370, dated 3rd April 1867, forwarding Despatch from Secretary of State No. 8, dated 25th February 1867, and enclosures.
From Judge, Small Cause Court, Chuadangah, No. 18, dated 5th April 1867.
Endorsement, Home Department, No. 601, dated 23rd May 1867, forwarding Despatch from Under Secretary of State, No. 15, dated 16th April 1867, and enclosure.
Endorsement, Home Department, No. 816, dated 15th August 1868, forwarding letter from Government of Bombay, No. 2638, dated 10th July 1868, and enclosures.
From Secretary to Government, Home Department, No. 1439, dated 19th August 1868, and enclosures.
Endorsement, Home Department, No. 1647, dated 22nd September 1868, forwarding letter from Government of Bombay, No. 2585, dated 3rd September 1868, and enclosures.
Endorsement, Home Department, No. 612, dated 12th May 1869, forwarding letter from Judicial Commissioner, Oudh, No. $\frac{22}{113}$, dated 24th April 1869, and enclosures.
From Acting Chief Secretary, Government of Madras, No. 21, dated 7th January 1870, and enclosures.
„ Government of Bombay, No. 4492, dated 19th November 1870, and enclosures.
Office Memorandum, Home Department, No. 2245, dated 24th December 1870, and enclosures.
Endorsement, Home Department, No. 1577, dated 5th September 1870, forwarding letter from Collis & Co., Solicitors, No. 4993, dated 19th August 1870, and enclosure.
From Government, Fort St. George, No. 18, dated 9th February 1872, and enclosures.
„ Ditto ditto No. 1571, dated 5th December 1872, and enclosures.
Office Memorandum, Home Department, No. 569, dated 19th March 1873, and enclosures.
From Vinayakrao Hari Chand, Attorney, High Court, Bombay, dated 11th August 1873.
„ Officiating Secretary to Government of Bengal, No. 3678, dated 12th August 1873, and enclosures.
Endorsement, Home Department, No. 1493J, dated 31st August 1873, forwarding letter from Government of Bombay, No. 1024 dated 20th February 1873, and enclosures.
Ditto ditto No. 685 J, dated 27th May 1874, forwarding letter from Secretary to Government, North-Western Provinces, No. 922, dated 18th June 1873, and enclosures.
Ditto ditto No. 1617 P, dated 6th June 1874, forwarding letter from Officiating Assistant Secretary to Chief Commissioner, Central Provinces, No. 570-16, dated 18th February 1874, and connected correspondence.
Ditto ditto No. 1266J, dated 9th October 1874, forwarding letter from Officiating Registrar, High Court, Calcutta, No. 2233, dated 9th August 1872, and enclosures.
From Chief Commissioner, British Burma, No. $\frac{12}{443}$, dated 31st October 1874, and enclosures.
„ Home Department, No. 52J, dated 12th January 1875, forwarding despatch from Secretary of State No. 53, dated 10th December 1874.

THE CODE OF CIVIL PROCEDURE.

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17. „ for services at a reasonable price.
18. „ for services and materials at a fixed price.
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35. „ of subsequent indorsee against intermediate indorser.
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39. „ of first indorsee against acceptor.
40. „ of subsequent indorsee against acceptor.
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42. „ of first indorsee against first indorser.
43. „ subsequent indorsee against first indorser; the indorsement being special.
44. „ subsequent indorsee against his immediate indorser.
45. „ subsequent indorsee against intermediate indorser.
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103. Plaint for restoration of movable property threatened with destruction, and for an injunction.
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115. Summons for disposal of suit.
116. Summons for settlement of issues.
117. Summons to appear.
118. Order for transmission of summons for service in the jurisdiction of another Court.
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120. Defendant's statement.
121. Subpœna.
122. Summons to attend and give evidence.
123. Notice to a party to the suit to show cause why he should not attend and give evdence.
124. Simple money-decree.
125. Decree for sale in a suit by a mortgagee or person entitled to a lien.
126. Final decree for foreclosure.
127. Preliminary order in administration suit.
128. Final decree in an administration suit by a legatee.
129. Order for dissolution of partnership.
130. Final decree in partnership suit.
131. Notice to show cause why execution should not issue.
132. Warrant to bailiff to give possession of land, &c.
133. Order for committal for resisting, &c., execution of decree for land.
134. Warrant of attachment of movable property in defendant's possession in execution of a decree for money.
135. Attachment in execution. Prohibitory order where property to be attached consists of movable property to which defendant is entitled subject to lien of other person to immediate possession.
136. Attachment in execution. Prohibitory order where property consists of debts not being negotiable instruments.
137. Attachment in execution. Prohibitory order where property consists of shares in public Company, &c.
138. Attachment in execution. Prohibitory order where property consists of immovable property.
139. Attachment. Prohibitory order where property consists of money or of any security in hands of a Court of justice or officer of Government.
140. Order for payment to plaintiff, &c., of money, &c., in hands of third party.
141. Appointment of manager.
142. Authority to Collector to stay public sale of land on securities being given.
143. Warrant of sale of property in execution of decree for money.
144. Order confirming sale of land, &c.
145. Certificate of sale of land.
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148. Prohibitory order against payment of debts sold in execution to other than purchaser.
149. Prohibitory order against transfer of shares sold in execution.
150. Warrant of arrest in execution.
151. Certificate of non-satisfaction of decree.
152. Notice to attaching creditor.
153. Commission to examine absent witnesses.
154. Commission for local enquiry, or for investigation of accounts.
155. Undertaking by next friend of minor to be responsible for defendant's costs.
156. Warrant of arrest before judgment.
157. Order for committal.
158. Attachment before judgment with order to call for security for fulfilment of decree.
159. Attachment before judgment on proof of failure to furnish security.
160. Attachment before judgment. Prohibitory order where property to be attached consists of movable property, to which the defendant is entitled, subject to lien of other person to immediate possession.
161. Attachment before judgment. Prohibitory order where property consists of immovable property.
162. Attachment before judgment. Prohibitory order where property consists of money in hands of other persons, or of debts not being negotiable instruments.
163. Attachment before judgment. Prohibitory order where property consists of shares in public Company, &c.
164. Notice of application for injunction.
165. Bond to be given by Receiver.
166. Order of reference to arbitration under agreement of parties.
167. Order of reference to arbitration by Court with consent.
168. Summons in summary suit on negotiable instrument.
169. Memorandum of appeal.
170. Register of appeals.
171. Notice to respondent of day fixed for hearing of appeal.
172. Decree on appeal.
173. Register of appeals from appellate decrees.
174. Notice to show cause why review should not be granted.
175. Notice of change of pleader.
176. Memorandum to be placed at foot of every summons, notice, decree, or order of Court, or any other process of Court.

A Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.

Preamble.

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.

Short title.

1. This Act may be cited as "The Code of Civil Procedure:"

Local extent.

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV. of 1874;

Commencement.

And it shall come into force on the day of 1876.

2. In this Act unless there be something repugnant in the subject or context—

Interpretation clause.

"Chapter." "Chapter" means a chapter of this Code:

"District." "District," means the local limits of the jurisdiction of a principal civil Court of original jurisdiction, and includes the local limits of the ordinary original civil jurisdiction of a High Court:

"District Court." "District Court" means the principal civil Court of original jurisdiction in a district:

"Subordinate Court." "Subordinate Court" means any Court subordinate to a High Court:

"Pleader." "Pleader" denotes every person entitled to appear and plead for another in Court and includes an Advocate and a Vakíl:

"Collector." "Collector" denotes every officer performing the duties of a Collector of Land Revenue:

'The cause of action.' 'A material part of the cause of action.' 'The cause of action' means the whole of the circumstances which the plaintiff must allege in order to show a right to sue, and 'a material part of the cause of action' means some one of those circumstances.

"Judgment." "Judgment" denotes the statement given by the Judge as the grounds on which his order or decision is founded:

"Decree." "Decree" means the order or decision by which a suit or appeal is determined so far as concerns the Court which passes the order or decision. An order on appeal, remanding a suit for re-trial, is not within this definition:

"Foreign Court." "Foreign judgment." "Foreign Court" means a Court situate beyond the limits of British India and not established by the authority of the Governor General in Council, and "Foreign judgment" means the judgment of a foreign Court.

"Jail." "Jail" means the civil jail of the District, or any place appointed by the Local Government for the confinement of persons under civil process:

"Government." And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

Enactments repealed. 3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column of the same schedule, but not so as to render invalid any thing lawfully done in conformity with any of them.

References in previous Acts. 4. But when in any other Act, or in any Regulation or Notification passed or issued prior to the day of 187 , reference is made to Act VIII. of 1859, Act XXIII. of 1861, or the 'Code of Civil Procedure,' such reference shall, so far as may be practicable, be read as applying to this Code; and when any procedure is directed to be in accordance with the provisions of Act VIII. of 1859, Act XXIII. of 1861, or the 'Code of Civil Procedure,' such procedure shall be deemed to be directed to be in accordance with the provisions of this Code.

Saving of certain Acts affecting Oudh, the Panjáb, and Burma. And, save as aforesaid, nothing herein contained shall be deemed to affect the following enactments, (namely)—

The Oudh Civil Courts Act, 1871:

The Panjáb Appeals Act, 1873:

The Burma Courts Act, 1875.

Sections extending to Mofussil Small Cause Courts. 5. The chapters and sections specified in the second schedule hereto annexed, extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI. of 1865. The other chapters and sections do not extend to such Courts.

Saving of jurisdiction and procedure— 6. Nothing in this Code alters or affects the jurisdiction or procedure—

(a) of Military Courts of Request; (a) of Military Courts of Request;

(b) of single officers appointed to try small suits in Madras and Bombay; (b) of a single officer duly authorized and appointed under the rules in force in the Presidencies of Madras and Bombay respectively, for the trial of small suits in Military Bázárs at Cantonments and Stations occupied by the Troops of those Presidencies respectively; or

(c) of Village Munsifs and Village and District Panchâyats in Madras; (c) of Village Munsifs or Village or District Panchâyats under the provisions of the Madras Code;

(d) of Military Panchâyats in Madras. (d) of Panchâyats in regard to suits against Military persons, according to the rules in force in the Presidency of Madras.

7. With respect to—

Saving of certain special or local laws. (a) the jurisdiction exercised by certain jágírdárs vested with powers under the provisions of and other authorities in Bombay Regulation XIII. 1830 (*for vesting certain Jagheerdars, Surinjameedars, and Enamdars with the Power of deciding Suits within the Boundaries of their respective estates*), and Act XV. of 1840 (*for extending Regulations XV. of* 1827, *and XIII. of* 1830, *of the Bombay Code to the Agents of Foreign Sovereigns*) in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

How far this Code applies to them. the procedure in such cases and in the regular and special appeals to the civil Courts allowed therein, shall be according to the

rules laid down in this code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

Code not to apply to Presidency Small Cause Courts, till specially extended.

8. Save as hereinafter provided, 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.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

Division of Code.

9. This Act is divided into ten Parts as follows:—

The first Part: Suits in General.
The second Part: Incidental Proceedings.
The third Part: Suits in particular Cases.
The fourth Part: Provisional Remedies.
The fifth Part: Special Proceedings.
The sixth Part: Appeals.
The seventh Part: Review of Judgment.
The eighth Part: References to the High Court.
The ninth Part: Special Rules relating to the High Court.

The tenth Part: Certain Miscellaneous Matters.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND *Res Judicata*.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

Courts to try all civil suits unless specially barred.

11. The Courts shall try all suits of a civil nature excepting suits of which their cognizance is barred by law.

Pending suits.

12. Except where a suit has been stayed under section 17, the Court shall not try any suit in which the matter in issue is also in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim pending in the same or any other Court, whether superior or inferior, in British India, or in any Court beyond the limits of British India established by the authority of the Governor General 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.

13. The Courts shall dismiss any suit in which the matter substantially in issue has been heard and finally decided by a Court of competent jurisdiction proceeding according to the forms of law, by a valid sentence, in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title and in the same quality.

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

Explanation II.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by showing the want of jurisdiction by such evidence as is allowed by law.

No foreign judgment shall operate as a bar to a suit in British India—

(*a*) if it has not been given on the merits of the case:

(*b*) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

(*c*) if it is in the opinion of the Court before which it is produced contrary to natural justice:

(*d*) if it has been obtained by fraud:

(*e*) if it sustains a claim founded on a breach of any law in force in British India.

Explanation III.—A decision is final within the meaning of this section when it is such as the Court making it could not alter on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

A decision is not final within the meaning of this section when it has been obtained by arrangement between the parties, and the Court has not given a judicial opinion on the matter.

Illustrations.

The following decisions shall cause the dismissal of a subsequent suit:—

(*a*). In a suit brought by one of the inhabitants of a village for the purpose of determining a right of way claimed by such inhabitants, a decree is made against him. Such decree shall bar all the other persons claiming the same right under the same title, but not if they claim under a different title.

(*b*). A sues B for a flock of sheep and obtains a decree. This is a bar to a subsequent suit by B against A for the flock, although the individual animals composing it may not be the same at the time of both suits, for the character of the whole matter in dispute is the same.

(*c*). A sues B for a particular bígha of land. Decree is made in favour of B. A dies intestate and C obtains letters of administration to his estate. B dies testate leaving D his executor who proves his will. C cannot sue D under the same title for any part of the same land.

(*d*). A sues B for two separate pieces of land. Decree is made in favour of A, who sells the two pieces to C. B cannot afterwards sue C under the same title for either piece separately.

(*e*). A sues B for Rs. 1,000. The Court decides that this sum was never due to A. A then sues B

for interest on the said sum. The decree in the former suit is a bar to this suit; for the subject of the second suit, though not identical with, is incident to and involved in, the subject of the first.

(*f*). A sues B for a piece of land bordering on a river and obtains a decree. This decision is a bar to a subsequent suit by B against A for alluvial soil since added to the land, or for trees the growth of the land, or for rent or mesne profits in respects of its occupation, by virtue of the same title under which the land was claimed.

(*g*). In a suit by A against B respecting rights, the Court decides that the defendant has no right to raise his wall ten feet. This decision is a bar to a suit by B against A to enforce his alleged right to raise the wall twenty feet; for the thing demanded by the latter suit is so included in that which was decided in the former suit, that the decree in the latter suit must confirm or annul the decree in the former suit.

(*h*). A sues B on a written obligation for the payment of money. Decree is made in favour of B on the ground that the money claimed is not due. This is a bar to a subsequent suit by A against B for money claimed not on the written obligation but on the same transaction.

(*i*). A sues B and C jointly for having together wrongfully fouled the water of a stream running through A's land, and obtains a decree against them. This is a bar to a subsequent suit by A against B separately for the same wrong, even though the decree in the prior suit has remained unexecuted.

(*j*) B and C jointly divert the water of A's watercourse. A sues B for the diversion, and the suit is dismissed. This is a bar to a subsequent suit by A against C for the same wrong.

(*k*). A and B, by their joint promissory note, promise to pay C Rs. 1,000. C sues them for non-payment of this sum, and obtains a decree against them. This is a bar to a subsequent suit by C against A on the same note.

The following decisions shall not cause the dismissal of a subsequent suit:—

(*l*). An interlocutary order that a party shall account; for this decision is not final.

(*m*). A decree passed by a subordinate Court under section 655 contingent upon the opinion of the High Court upon a point referred; for this decision is not final.

(*n*). A decree of a Court of Small Causes under Act XI. of 1865, for Rs. 1001; for this decision has not been given by a Court of competent jurisdiction.

(*o*). A decree of a like Court for the balance of a partnership-account, such balance not having been struck by the parties or their agents; for such Courts have no jurisdiction to make such decrees.

(*p*). A decree of a Revenue Court in a suit for rent declaring the validity or invalidity of a bond; for such Courts have no jurisdiction to make such declarations.

(*q*). A decree in a suit in which it appears on the face of the record that summons has not been served on the defendant or his agent, when the defendant or his agent has not expressly or impliedly waived the necessity of such service.

(*r*). A decree that the defendant pay the damages, which the plaintiff sustained; for here the decision is uncertain, and is not rendered certain by any part of the record.

(*s*). A decree that the plaintiff shall recover such compensation as Z shall determine; for here the decision is not final.

(*t*). A decree in a suit for three hogsheads of sugar that the defendant pay, at the rate of Rs. 150 per hogshead, the sum of Rs. 460; for here the sentence is invalid, evident error appearing on the decree itself.

(*u*). A decree declaring that the defendant shall go quit of a debt demanded by the plaintiff, and which the defendant had confessed to be due in his written statement in the same suit; for here the decision is invalid as being contrary to the judicial confession of a party.

(*v*). A decree given against one not a party to the suit, or against a minor not properly represented by a guardian.

(*w*). A sues B for one bíghá of land. The Court decrees that A shall recover three bíghás. The defendant then sues A for the two additional bíghás. The former decree is no bar, because it was not in a matter alleged by one party and denied by the other in the suit in which it was made.

(*x*). A's executor, B, sues C for property belonging to A's estate. It appears that C has no such property and a decree is thereupon made in his favour. Afterwards C gets possession of part of A's estate. The former decree is no bar to a subsequent suit by B against C.

(*y*). A sues B, C and D. Before the judgment, D's name is struck out of the proceedings. A decree afterwards given in the suit does not bind D, unless his name has been reinstated on the record and is thereon at the date of the judgment.

(*z*). A sues B and C. Before the judgment D's name is introduced as a party on the record by fraud and without his knowledge. A decree afterwards given in the suit does not bind D unless he has consented to becoming a party.

(*aa*). A obtains against B a decree declaring that A is the owner of certain land. This is no bar to a subsequent suit by B against A for a right of way over the same land.

(*bb*). A sues B to obtain a right to an easement for the passage of cattle. Decree is made in favour of B. This is no bar to a subsequent suit by A against B for a right of footway; for the easements are of different kinds.

(*cc*). A sues B for trespassing on his land. Decree is made in favour of B. This does not bar a subsequent suit by A against B claiming rent from him as tenant of such land.

(*dd*). A, as executor to B, sues C for certain land. Decree is made in favour of C. A may nevertheless, in his own right, sue C for the same land; for here the plaintiff in each suit does not prosecute in the same quality.

(*ee*). On the death of A, a Hindú, B, takes possession of A's land, claiming to hold it as A's adopted son. A's widow, C, sues B for possession as widow. B pleads the adoption. The Court finds that B was not adopted; and decrees in favour of C. On C's death, A's collateral kindred take possession of the land. The former decree does not bar a suit by B against them for possession as A's adopted son, for the collateral kindred do not claim under C.

CHAPTER II.

Of the Place of Suing.

Court in which suit to be instituted.

14. Every suit shall be instituted in the Court of the lowest grade competent to try it, unless an option as to the selection of the Court is allowed by this Code or some other law.

Suits to be instituted where subject-matter situate.

15. Subject to the pecuniary or other limitations prescribed by any law, suits

(*a*) for the recovery of immovable property,

(*b*) for the partition of immovable property,

(*c*) for the foreclosure or redemption of a mortgage of immovable property,

(*d*) for the determination of any other right or interest to or in immovable property,

(*e*) for the recovery of movable property distrained or attached for any cause,

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

Provided that suits to obtain relief respecting immovable property held by the defendant may, when 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 to whose jurisdiction he is personally subject.

Explanation.—In this section 'property' means property situate in British India.

Suits to be instituted where defendants reside or cause of action arose.

16. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(*a*) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(*b*) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resided, or carries on business, or personally works for gain: provided that 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; or

(*c*) the cause of action arises; or

(*d*) a material part of the cause of action arises.

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

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action occurring 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 request 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 occurred, 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 occurred. 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 be maintained without the leave of the Court.

(*c*) A draws, in Simla, a bill on B, who accepts the bill in Calcutta, and returns it by post to A. The bill does not mention any place of payment. It is presented to B in Calcutta, and he fails to pay. One material part of the cause of action has occurred at Simla and others at Calcutta. The suit may therefore be brought either in Simla or in Calcutta.

(*d.*) A signs a contract in Calcutta for the delivery of rice to B at Delhi, and delivers it accordingly. B does not pay the price, and A sues him for it. One material part of the cause of action has occurred in Calcutta and another in Delhi. The suit may therefore be brought either in Calcutta or in Delhi.

(*e.*) A lets a house in Howrah to B at a monthly rent payable in Howrah. A dies intestate. C obtains, in Calcutta, a grant of letters of administration to A's estate. B allows the rent to fall into arrear. One material part of the cause of action has occurred in Calcutta and another in Howrah, and C may therefore sue B for the arrears either in Calcutta or in Howrah.

Power to stay proceedings where the whole cause of action did not arise and all defendants do not reside within jurisdiction.

17. If a suit is instituted in a Court within the local limits of whose jurisdiction only part of the cause of action arose, and where all the defendants do not actually and voluntarily reside, or carry on business, or personally work for gain, any defendant may move the Court to stay proceedings, and if the Court is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

Illustration.

A and B in Calcutta enter into a written contract to carry on a partnership business in Delhi, and carry it on accordingly. B resides in Benares. A sues B in Calcutta for an account of partnership transactions. If the Court finds that justice is more likely to be done by the suit being instituted in Delhi or in Benares, it may on B's motion stay the proceedings.

Motion when to be made.

18. Every such motion shall be made before the settlement of issues and at the earliest possible opportunity, and any defendant not so moving shall be deemed to have acquiesced in the institution of the suit.

Remission of Court-fee where suit instituted in another Court.

19. Where the Court, under section 17, stays proceedings, and the plaintiff institutes his suit in another Court, the plaint shall not be chargeable with any fee under the Court Fees Act: provided that the proper fee has been levied on the institution of the suit in the former Court.

The interval between the institution of the suit and the date of so staying proceedings therein shall be excluded in computing the period of limitation prescribed for such suit.

Forum in suits for compensation for wrongs.

20. In suits for compensation for wrong done to person or property, if the wrong was done within the local limits of the jurisdiction of one Court and the

defendant resides within the local limits of the jurisdiction of another Court the plaintiff may at his option sue in either of the said Courts.

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.

(*c*). A travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue either at Howrah or at Allahabad.

Transfer of suits.

21. The District Court may withdraw any suit instituted in any Court subordinate to such District Court, and try the suit itself, or may, after giving notice to the parties, transfer it for trial to any other such subordinate Court competent in respect of the amount or value of the subject-matter of the suit to try the same.

High Court may transfer suits and appeals.

22. The High Court may order that the cognizance of any suit or appeal instituted in any subordinate Court other than a Court of Small Causes, shall be transferred to any other subordinate Court, not being a Court of Small Causes, competent in respect of the amount or value of the subject-matter of the suit or appeal to try the same.

Suits for immovable property situate in single districts, but within jurisdictions of different Courts.

23. If the suit be for immovable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be brought in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

In such case the defendant may apply to the District Court to transfer the suit to another of the Courts having jurisdiction, and the District Court shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Suits for immovable property situate in different districts.

24. If the immovable property be situate within the limits of different districts, the suit may be brought in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

In such case the defendant may apply to the High Court to transfer the suit to another of the Courts having jurisdiction. If the suit is brought in any Court subordinate to a District Court, the application shall be submitted through the District Court to which such Court is subordinate. The High Court may determine in which of the several Courts having jurisdiction the suit shall proceed.

Suits for immovable property situate in districts subject to different High Courts.

25. If the districts within the limits of which the immovable property is situate, are subject to different High Courts, the application shall be submitted to the High Court to which the district in which the suit is brought is subordinate;

and such High Court may, after hearing the objections, if any, of the defendant, determine whether or not the suit shall proceed in the Court in which it is instituted.

Suit for immovable property alleged to be within another local jurisdiction.

26. If in a suit for immovable property, the defendant object to the hearing of the suit on the ground that the property is not situate within the local limits of the jurisdiction of the Court, the Court may determine the point;

and if the Court find that the property is situate within such limits, it shall proceed to try the suit.

CHAPTER III.

Of Parties and their Appearances, Applications and Acts.

Who to be joined as plaintiffs.

27. All persons having an interest in the subject-matter of the suit and in obtaining the relief sought, may be joined as plaintiffs, except as otherwise provided in this Code.

Distinct claims.

But persons having distinct claims against another in respect of distinct matters cannot, if the defendant object, join to enforce such claims in one suit.

Illustration.

A and B are partners. C deals with the firm and becomes indebted to it. A sells a horse, his private property, to C. A and B cannot, if C objects, sue him in one suit for the debt due to the firm and also for the price of the horse.

Who to be defendant.

28. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to the complete determination or settlement of the questions involved therein.

But persons against whom distinct claims are made in respect of distinct matters cannot, if they or any of them object or objects, be joined for the purpose of enforcing such claims in one suit.

Illustration.

A and B are partners, and become as such indebted to C in Rs. 5,000. A on his own account buys a horse for Rs. 1,000 from C and fails to pay the price. C cannot, if A or B objects, sue in the same suit A and B for the Rs. 5,000 and A for the Rs. 1,000.

Parties to be joined.

29. Of the parties to the suit those who are united in interest must be joined as plaintiffs or defendants. But if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be joined as a defendant, the reason thereof being stated in the plaint.

And when the question is one of common or general interest of so many persons that it is impracticable to bring them all before the Court, one or more may sue or defend on behalf of the whole, the reason thereof being stated in the plaint.

Parties to bills, hundís and notes.

30. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange, hundís and promissory notes, may, all or any of them, be included in the same suit at the option of the plaintiff.

Time for taking objections as to non-joinder or misjoinder of parties.

31. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity; and any such objection not taken before the settlement of issues shall be deemed to have been waived by the defendant.

Appearances, applications and acts may be in person, by recognized agent or by pleader.

32. Any appearance, application or act in or to any Court, made or done by a party to a suit in such Court, may, except when otherwise expressly provided by this Code, be made or done by the party in person or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person if the Court so direct.

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

33. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead and act for such other: and in like manner when 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.

Authority to be in writing, signed and filed.

The authority shall be in writing, signed by the parties giving it, and shall be filed in Court.

Recognized Agents.

34. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

Persons holding powers-of-attorney from parties out of jurisdiction.

1*st*—Persons holding general powers-of-attorney from parties not within the jurisdiction of the District Court within the limits of which the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

Persons carrying on trade or business for parties out of jurisdiction.

2*ndly*—Persons carrying on trade or business for and in the names of parties not within the jurisdiction of the District Court within the limits of which the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

Explanation.—A partner is not, as such, a recognized agent within the meaning of this clause.

Service of process on recognized agent.

35. Processes served on a recognized agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

The provisions of this Code relative to the service of process on a party to a suit apply to the service of process on a recognized agent.

Appointment of pleader.

36. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing under the hand of the client and shall be filed in Court.

When so filed, it shall be considered to be in full force until revoked by a writing signed by the client and filed in Court, or until the pleader dies, or the suit is determined.

Service of process on pleader.

37. Processes served on the pleader of any party, or left at the office or ordinary residence of such pleader, relative to a suit, and whether the same be 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 in relation to the suit as if the same had been given to or served on the party in person.

Service of process on party who has not appointed a pleader.

38. In all cases in which a party to a suit has not appointed a pleader to act for him, all processes shall be served upon such party in the manner hereinafter provided for the service of a summons upon a defendant to appear and answer.

Agent to receive process.

39. Besides the recognized agents described in section 34, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of processes.

His appointment to be in writing and to be filed in Court.

Such appointment shall be in writing signed by the principal, and the original appointment, or a copy thereof, if the appointment be a general one, shall be filed in Court.

Court may direct that persons appearing to be interested shall be made parties.

40. If at any stage of a suit, it appear to the Court that any person who may be entitled to, or who may claim some share or interest in the subject-matter of the suit, and who may be likely to be affected by the result, has not been made a party,

or that any one of several plaintiffs should be made a defendant,

the Court may, in its discretion, direct that such persons shall be made a party or that such plaintiff shall be made a defendant, as the case may be.

In such case the Court shall issue a notice to such person in the manner hereinafter provided for the service of a summons on a defendant.

Power to remove parties.

41. If at any stage of the suit, it appear to the Court that any person has been improperly made a party, the Court may direct

that his name shall be struck out from the plaint, or that the proceedings shall be stayed as against him.

CHAPTER IV.

On the Frame of the Suit and the Form of the Plaint.

Suit how to be framed.

42. Every suit shall as far as practicable be so framed as to afford ground for a single decision upon the whole subject in dispute, and so to prevent further litigation concerning it.

Suit to include the whole claim.

43. Every suit shall include the whole of the claim arising out of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court, and the fact of such relinquishment shall be entered on the record.

Relinquishment of part of claim.

If a plaintiff intentionally relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted shall not afterwards be entertained.

Illustrations.

(*a.*) Two partners, A and B, dispute regarding unsettled accounts of the patnership. A sues B for a particular item of the accounts. The suit must be dismissed, for it should have been for the whole of A's demand against B, so that there might be a general adjustment of the accounts.

(*b.*) A, as heir of Z, claims the ownership of lands in two districts, B and C. D claims the same lands also as heir of Z. A sues D in district B for the lands in that district only, omitting the rest of the lands. A's suit against D for the lands in district C cannot afterwards be entertained.

(*c.*) A sues D as in the last preceding illustration. A also claims other lands from D, alleging that D obtained a conveyance of them from A by fraud. A may make those lands the subject of a separate suit.

Joinder of several claims in the same suit.

44. Two or more claims, founded on distinct causes of action, by and against the same parties, and cognizable (as regards their nature) by the same court, may at the option of the plaintiff be joined in the same suit; provided that, when claims are so joined, the jurisdiction of the Court to hear the suit shall depend on the amount or value of the aggregate subject-matters.

Multifariousness.

But different claims, founded on distinct causes of action, against different parties, cannot be joined in the same suit where each of those parties has a separate interest.

And claims made against a defendant in different characters, cannot be joined in the same suit.

Illustrations.

(*a.*) A and B, by their three joint promissory notes, promise to pay to C on demand Rs 1,000, Rs. 1,500, and Rs. 2,000. A and B fail to pay the same. C may sue A and B in the same suit for Rs. 4,500, being the aggregate amount of the three notes.

(*b.*) A, the guardian of B, a minor, sells a portion of the minor's property to C, another portion to D, and another to E. B attains majority and sues in the same suit C, D and E to set aside the sale to them respectivley. Any of the defendants may object that the suit is wrongly framed.

(*c.*) A sues B, the executor of C, in the same suit for a debt due from C, and also for a debt due from B personally. The defendant may object that the suit is wrongly framed.

Objections on ground of multifariousness.

45. All objections under section 44 shall be taken at the earliest possible opportunity; and any objection not taken before the settlement of issues shall be deemed to have been waived by the defendant.

Power to order distinct claims to be tried separately.

46. If two or more claims founded on distinct causes of action be joined in one suit, and the Court is of opinion that they cannot conveniently be tried together, the Court may, at any stage of the suit, order such claims, or any of them, to be tried separately on the record as made up.

Claims for immovable property and for mesne profits.

47. A claim for immovable property, and a claim for the mesne profits of such property, may, at the option of the plaintiff, be deemed to be founded on distinct rights to sue, within the meaning of sections 44 and 46.

CHAPTER V.

Of the Institution of Suits.

Suits to be commenced by plaint.

48. Every regular suit shall be commenced by a plaint.

Particulars to be contained in plaint.

49. The plaint must be distinctly written in the language in use in proceedings before the Court, and must contain the following particulars:—

(1.) the name of the Court in which the suit is brought;

(2.) the name, description and place of abode of the plaintiff;

(3.) The name, description and place of abode of the defendant, so far as they can be ascertained;

(4.) a plain and concise statement of the facts constituting the cause of action, and where and when it accrued;

(5.) a demand of the relief which the plaintiff claims.

Explanation I.—When the plaintiff sues in a representative character, the plaint should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(*a.*) A sues as B's executor. The plaint must state that A has proved B's will.

(*b.*) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(*c.*) A sues, as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

Explanation 2.—The plaint must 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.

Illustration.

A dies leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must show that B has causelessly refused to sue D or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

Explanation 3.—If the cause of action arose beyond the period ordinarily allowed by any law for commencing the suit, the plaint must show the ground upon which exemption from such law is claimed.

Explanation 4.—If the plaintiff seek the recovery of money, the plaint must state the precise amount, so far as the case admits.

Illustration.

A sues for mesne profits:

A sues for the amount which will be found due to him on taking unsettled accounts between him and B.

In each of these cases the plaint need only state approximately the amount sued for.

Plaint to be subscribed and verified.

50. The plaint shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following, or to the like effect:—

I (A. B.), the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

Subscription and verification in case of plaintiff's inability.

51. If the plaintiff, by reason of absence or for other good cause, be unable to subscribe and verify the plaint, the Court may, if it think fit, allow it to be subscribed and verified on his behalf by any person whom the Court considers personally acquainted with the facts of the case and otherwise competent to make the verification.

What, besides absence, is good cause, is for the consideration of the Court in each case.

Illustrations.

(*a*). The fact that a plaintiff has been exempted from attendance in Court on account of his rank is not good cause why he should not subscribe and verify the plaint.

(*b.*) Severe illness may be good cause.

When the plaint may be rejected, returned for amendment, or amended.

52. The plaint may, at the discretion of the Court, and at any time before the decree is passed, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

(*a.*) if it do not state correctly and without prolixity the several particulars hereinbefore required to be specified therein;

(*b.*) if it contain any particulars other than those so required;

(*c.*) if it be not subscribed and verified as hereinfore required; or

(*d.*) if it do not disclose a cause of action.

Explanation.—A plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

When the plaint shall be returned to be presented to the proper Court.

53. The plaint, when presented, shall be returned to be presented to the proper Court in the following cases:

(*a.*) If a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(*b.*) If, in a suit relating to immovable property, but not coming under the proviso to section 15, it appear that no part of such property is situate within the local limits of the Court's jurisdiction.

(*c.*) If, in any other case, it appear that the cause of action, or a material part thereof, did not occur, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

When the plaint shall be rejected.

54. The plaint shall be rejected in the following cases:—

(*a.*) If the relief sought 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.

(*b.*) If the relief sought 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:

(*c.*) If, in the case mentioned in section 369, the plaintiff fail to furnish security for the payment of the costs that may be incurred by the defendant:

(*d.*) If the suit appear from the statement in the plaint to be barred by any positive rule of law.

Procedure on rejecting a plaint.

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order, and the plaint, with the order and any deposition made by or on behalf of the plaintiff, shall be deposited in the record-room of the Court.

Procedure on returning a plaint.

When a plaint is returned for amendment, the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it, shall be endorsed upon it before it is returned, and shall be signed and sealed by the Judge.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When rejection of plaint does not preclude presentation of fresh plaint.

57. If the Court consider the plaint admissible it shall cause to be endorsed thereon a memorandum of the documents (if any) which the plaintiff has filed along with it, together with the names of the persons presenting them.

Procedure on admitting plaint.

The Court shall also cause the particulars mentioned in section 49 to be entered in a book to be kept for the purpose, and called the Register of Civil suits. The entries shall be numbered in every year according to the order in which the plaint is presented.

58. If a plaintiff sue upon a written document in his own 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.

Delivery of document or copy.

If he rely on any other documents as evidence in support of his claim, he shall enter such documents in a list to be added at the foot of the plaint.

List of other documents.

59. In case of any suit founded upon a bill of exchange or other negotiable instrument, if it be proved to the satisfaction of the Court that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made 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.

60. If the document on which the plaintiff sues be an entry in a shop-book or other book, the plaintiff shall produce the book to the Court, together with a copy of the entry on which he relies.

Production of shop-book.

The Court shall forthwith mark the document for the purpose of identification : and after examining and comparing the copy with the original, shall return the book to the plaintiff.

Original entry to be marked and returned.

61. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered at the foot of the plaint, and which is not produced or entered accordingly, shall not be received in evidence on his behalf at the hearing of the suit without the leave of the Court.

Inadmissibility of document not produced when plaint filed.

Explanation.—A document handed to a witness merely to refresh his memory is not received in evidence within the meaning of this section.

Issue of Summons.

62. When the plaint has been registered, a summons shall be issued to the defendant to appear and answer the claim on a day to be therein specified

Summons.

(*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 other person able to answer all such questions.

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.

63. If the Court see 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.

If the Court see reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

64. No plaintiff or defendant shall be ordered to appear in person who at the time is *bonâ fide* residing at a distance of more than fifty miles from the place where the Court is held, unless he be resident within the local limits of the jurisdiction of the Court :

No party to be ordered to appear in person unless resident within 50 miles ;

or within local jurisdiction of Court.

Provided that, if railway communication exists between the place where he resides and the place where the Court is held, or within a convenient distance from such places, the Court shall have a discretion as to making such order.

or unless there be railway communication.

65. 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 :

Summons to be either to settle issues, or for final disposal.

Provided that, in every suit cognizable by Courts of Small Causes, the summons shall be for the final disposal of the suit.

66. The day for the appearance of the defendant shall be fixed by the Court with reference to 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.

Fixing day for appearance of defendant.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

67. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

68. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, parties to be directed to produce their witnesses.

A similar direction shall be given to the plaintiff at the time of issuing the summons.

The summons may contain a demand of the costs incurred to the time of payment.

CHAPTER VI.

Service of Summons on the Defendant.

69. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

Delivery of summons for services.

70. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or by the Registrar or Clerk of the Court and sealed with the seal of the Court.

Mode of service.

71. When there are more defendants than one, service of the summons shall be made on each defendant:

Service on several defendants.

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction, service on one defendant for himself and for the other defendants shall be sufficient, unless the Court otherwise directs.

72. Whenever it may be practicable, the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service to be on defendant in person, when practicable, or on duly empowered agent.

73. 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 issues, 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.

74. In a suit for immovable property, if the summons cannot be served on the defendant in person and the defendant have no agent empowered to accept the service of the summons, it may be served on any agent of the defendant in charge of the property.

Service on agent in charge, in suits for immovable property.

75. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

When 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 section.

76. When the summons is served on the defendant personally, or on an agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service is made to an acknowledgment of service to be endorsed on the original summons or on a copy thereof signed and sealed as aforesaid.

Person served to endorse summons.

If such person refuse to sign the acknowledgment, the serving officer may affix the copy of the summons on some conspicuous part of the house in which the defendant is dwelling, but the service of the summons shall be held sufficient if it be proved to the satisfaction of the Court, notwithstanding that a copy of the summons shall not have been so affixed.

Procedure where he refuses.

77. If the defendant cannot be found and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made, the serving officer shall fix the copy of the summons on some conspicuous part of the house in which the defendant is dwelling, and the summons shall thereupon be deemed to have been served.

If summons cannot be served, copy to be fixed on dwelling-house.

Explanation.—The manner of dwelling here intended is such as renders it probable that the fact of the fixing of the copy will come to the defendant's knowledge.

78. If the summons cannot be otherwise served on the defendant, and the serving-officer cannot find any house in which the defendant is dwelling, the serving-officer shall return the summons to the Court from which it issued, with an endorsement thereon that he has been unable to serve it.

Summons when returned with endorsement of non-service.

79. The serving-officer shall, in all cases in which the summons has been served, endorse on the original summons, or on a copy thereof signed and sealed as aforesaid, the time when and the manner in which the summons was served, and such endorsement shall be evidence of the service of the summons.

Endorsement of time and manner of service.

80. When a summons is returned without having been served, if the plaintiff satisfies the Court that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or if for any other reason the summons cannot be served, 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 in which the defendant last resided; or in such other manner as the Court thinks fit.

When summons is returned unserved, Court to order substituted service if satisfied that defendant is avoiding service.

The service substituted by order of the Court, shall be as effectual as if it had been made in any of the modes hereinbefore mentioned.

81. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent empowered to accept the service of the summons, the Court in which the suit is instituted shall send the summons, either by an officer of the Court or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof, deliver it to the proper officer of such Court, to be served in the manner hereinbefore directed.

Upon the return of the summons by the serving-officer, it shall be sent back to the Court from which it originally issued.

Explanation.—In the towns of Calcutta, Madras, and Bombay, the Courts to which summonses shall be sent for service under this section are the Courts of Small Causes.

82. If the defendant be in jail under either civil or criminal process, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service of summons on defendant in jail.

The summons shall be returned to the officer from whom it was received, with a statement of the service endorsed thereon and signed by the officer in charge of the jail.

83. If the jail in which the defendant is confined is not in the district in which the suit is brought, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 82.

Procedure if jail be in a different district.

84. If the defendant resides out of British India, and has no agent empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be a post to such place.

Service of summons when defendant resides out of British India and has no agent to accept service.

85. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with his endorsement that the summons has been served on the defendant, such endorsement shall be conclusive evidence of the service.

Service through a British Resident or Agent of Government.

86. Nothing herein contained shall prevent the Court from substituting for the summons a letter signed by the Judge or Registrar or Clerk of the Court, and under the seal of the Court, when the person whose appearance is required is of a rank which entitles him to such mark of consideration.

Substitution of letter for summons.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 87, shall be treated in all respects as a summons.

87. When a letter or other communication is substituted for a summons, it may be sent by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the person whose appearance is required has an agent empowered to accept the service of the summons, in which case it shall be served on such agent.

Mode of sending such letter.

CHAPTER VII.

Of the Appearance of the Parties and Consequence of Non-appearance.

88. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Parties to appear on day fixed in summons for defendant to appear and answer.

89. If on the day fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to deposit, within the time allowed, the sum required to defray the cost of issuing such summons, the Court may order that the suit be dismissed:

Dismissal of suit where summons not served in consequence of plaintiff's failure to deposit costs of issuing it.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he has entered an appearance by a pleader or by a duly authorized agent, when he is allowed to appear by agent, or is in attendance in person.

Proviso.

90. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit may be adjourned, neither party appears when called upon by the Court, the suit shall be dismissed.

If neither party appear, suit to be dismissed.

91. Whenever a suit is dismissed under either of the last two preceding sections, the plaintiff may bring a fresh suit; or if within the period of thirty days from the date of the order dismissing the suit he satisfies the Court that there was a sufficient excuse for his not making the deposit required within the time allowed or for his non-appearance, as the case may be, the Court may restore the suit to its file.

In such case plaintiff may bring fresh suit;

or Court may restore the suit to its file,

92. If the plaintiff appears and the defendant does not appear, and the Court is satisfied that the summons was duly served, the Court may proceed *ex parte* either to dispose of the suit or to settle issues, according to the tenor of the summons.

Procedure if plaintiff only appear.

93. If the plaintiff appears and the defendant does not appear, and the Court is not satisfied that the summons was duly served in any of the modes of service hereinbefore provided, the Court may direct a second summons to the defendant to be issued in any of the said modes.

If plaintiff only appear, and due service of summons be not proved, Court may order issue of second summons.

94. If the plaintiff appears and the defendant does not appear, and it is proved to the satisfaction of the Court 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 the suit to a future day to be fixed by the Court, and may direct notice of such day to be given to the defendant.

Procedure where plaintiff only appears, and it is proved that summons was served, but not in due time.

95. If the defendant, on any subsequent day to which the hearing of the suit *ex parte* has been adjourned, appear and assign good cause for his previous non-appearance, he may, upon such terms as the Court may direct as to costs or otherwise, be heard in answer to the suit, in like manner as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.

96. If the defendant appears and the plaintiff does not appear, the Court shall pass a decree against the plaintiff by default, unless the defendant admits the claim, in which case the Court shall pass a decree against the defendant upon such admission.

Procedure where defendant only appears.

97. If on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Procedure where defendant residing out of British India does not appear.

98. When a decree is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same right to sue.

Decree against plaintiff by default bars fresh suit.

99. If there are more plaintiffs than one, and one or more of them shall appear in person or by a pleader or by a co-plaintiff duly authorized, and the other or others of them shall not appear in person nor by a pleader nor by a co-plaintiff duly authorized, the Court may proceed with the suit at the instance of the plaintiff or plaintiffs who may have appeared, in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Procedure in case of non-attendance of one or more of several plaintiffs.

100. If there be more defendants than one, and one or more of them appear in person or by a pleader or by a co-defendant duly authorized, and the others of them do not appear in person or by a pleader or by a co-defendant duly authorized, the Court shall proceed with the suit, and shall at the time of passing judgment make such order with respect to the defendant or defendants who have not appeared as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

101. If a plaintiff or defendant who has been ordered to appear in person under the provisions of section 63 or section 430 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 sections 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.

102. In support of the cause shown by a plaintiff or defendant for failing to appear in person, the Court shall receive any declaration in writing on paper signed by such plaintiff or defendant and verified in manner hereinbefore provided for the verification of plaints.

Court to receive written declaration in support of cause shown for failure to appear.

CHAPTER VIII.

Of Written Statements.

103. The parties may, at the first hearing of the suit, tender written statements of their respective cases, and the Court shall record such statements and deal with them as if given in evidence.

Written statements.

104. Written statements shall be chargeable with the fee prescribed by the Court Fees Act, 1870, for petitions to the Court.

Written statements chargeable with Court fees.

105. If 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, and if in such claim of the defendant against the plaintiff both parties fill the same character as 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, tender a written statement containing the particulars of the debt sought to be set-off.

Particulars of set-off to be given in written statement.

The Court shall thereupon enquire into the same,

and if it find that the case fulfils the requirements of the former Part of this section,

the Court shall set-off the one debt against the other.

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. 1000.

(*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, in which B seeks the set-off.

(*c*) A sues B on 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 a pass. 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.

106. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit unless called for by the Court.

No written statement to be received after first hearing unless called by Court.

The Court, in the exercise of its original jurisdiction, may at any time require a full and true written statement, or additional written statement, from any of the parties, and fix a time for presenting the same.

Court may at any time call for written statement.

If any party from whom a written statement is so called for fail to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such other order in relation to the suit as it thinks fit. And in case of wilful disobedience to the requisition of the Court, he shall also be liable to the penalties provided by section 176 of the Indian Penal Code.

Procedure when party fails to present written statement called for by Court.

107. Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove.

Frame of written statements.

108. Written statements shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints and no written statement shall be received unless it be so subscribed and verified.

Written statements to be subscribed and verified.

Persons exempted from attendance in Court are not exempted thereby from subscribing and verifying written statements.

109. If it appear to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may strike out any part of the statement, or, by an order to be endorsed thereon, reject the same, and return it to the party by whom it was made, imposing such terms as to costs or otherwise as the Court thinks fit.

Rejection of argumentative, prolix or irrelevant written statements.

It shall not be competent to such party to present another written statement, unless it be expressly called for or allowed by the Court.

CHAPTER IX.

Of the Examination of the Parties at the first Hearing.

110. 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 he or his pleader is accompanied, may be examined orally by the Court.

Oral examination of party, or companion of himself or his pleader.

The substance of the examination shall be reduced to writing and shall form part of the record.

Substance of examination to be written.

111. If any party to a suit refuses, without lawful excuse, to answer any material question relating to the suit which the Court thinks fit to put to him, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Consequence of refusal of party to answer material question.

112. If the pleader of any party who appears by a pleader 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.

Consequence of refusal or inability of pleader to answer.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

Of the Admission, Inspection, Production, Impounding and Return of Documents.

113. Either party may exhibit to the other or to his pleader, at any time before the hearing, any document material to the suit, and request an admission in writing of its genuineness.

Admission of documents.

If the adverse party or his pleader fail to give the admission within four days after the request, and if the party exhibiting the document be afterwards put to expense in order to prove its genuineness, and the same be finally proved or admitted at the hearing, such expense, to be ascertained at the hearing, shall be paid by the party refusing admission, unless the Court is satisfied that there were good reasons for the refusal.

Inspection of documents.

114. Subject to the other provisions of this Code and to the rules of the Indian Evidence Act, 1872, the Court before which a suit is pending may, in its discretion, and upon application in writing order any party to give to any other party within a specified time, an inspection and copy, or permission to take a copy, of any books, papers, or other documents in his possession or under control, containing evidence relating to the merits of the suit or the defence therein.

The application shall state—

(*a*) that the suit is pending,

(*b*) the nature of the suit,

(*c*) that the applicant has just grounds to maintain or defend the suit, as the case may be,

(*d*) his belief that the documents are in the possession or under the control of the party against whom the order is sought,

(*e*) the reason of the application,

(*f*) the existence, nature, identification, and admissibility of the documents ; and

(*g*) that the application has been made at the earliest opportunity, or (where this is not the case) that there was good cause (stating it) for the delay.

Every such application must be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints.

Court may send for papers from its own records or from other public offices or Courts.

115. The Court may, of its own accord, 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 or public office, the record of any other suit or case, or any other official paper, and inspect the same.

Every application made under this section must be supported by an affidavit showing how the record or paper is material to the suit in which the application is made :

Except State papers.

Provided that the Court shall have no power to compel the production of any document relating to affairs of State, the production of which may, in the opinion of the officer in whose custody it is, be contrary to good policy.

Of the Production of Documents at the first Hearing.

Documentary evidence to be produced at first hearing.

116. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called on by the Court, all their documentary evidence of every description on which they intend to rely, and which has not already been filed in Court,

and all documents or other things specified in any order made by the Court under section 114 at any time before the hearing of the suit.

No documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the Court for the non-production thereof at the first hearing. And the Judge receiving such evidence shall record the grounds of his doing so.

Documents to be received by Court.

117. The Court shall receive the documents produced by the parties.

Rejection of irrelevant or inadmissible documents.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Admitted documents to be marked and filed.

118. When a document is admitted in evidence at any stage of the suit, it shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced, and shall be filed as part of the record :

Entries in shop-books.

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the book shall be returned to the person producing in.

Rejected documents to be marked

119. When a document is rejected by the Court, it shall be endorsed in the manner specified in the last preceding section with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

and returned ; unless detained by Court.

The document shall then be returned to the party who produced it unless the Court thinks proper, on suspicion of the document having been fabricated, or for any other reason, to order that it be impounded.

Court may order any document to be impounded.

120. The Court may, if it see sufficient cause, direct any document 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.

After lapse of time for appeal, document admitted in evidence may be returned.

121. In suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, shall ordinarily be entitled, on application to the Judge of the Court in which such document may be, to receive back the same.

122. In suits in which an appeal is not allowed, the document may be returned, on application to the Court at any time after the suit has been disposed of.

If no appeal, document may be returned as soon as decree is made.

123. A document may be returned before the time mentioned in section 121 or section 122, if the Judge of the Court in which the document may be thinks proper, for any special reason, to order its return.

Document may for special reasons be returned before time limited.

124. No document shall be returned which, by force of the decree, has become void or useless, or which the Court has directed to be detained for purposes of public justice.

Document not to be returned in certain cases.

125. When a document is returned during the pendency of the suit in which it has been produced, a certified copy, made at the expense of the applicant, and bearing the stamp prescribed by law for copies of documents, shall be substituted for the original in the record of the suit.

Certified copy to be kept.

126. On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Receipt to be given for returned document.

CHAPTER XI.

Of the Settlement of Issues.

127. Issues arise when a proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

They are of two kinds: (1) issues of fact, (2) issues of law.

At the first hearing of the suit, the Court shall enquire upon what 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 the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it may try those issues first.

128. The Court may frame the issues from any of the follwing materials :—

Allegations from which issues may be framed.

(*a*) allegations orally made by the parties, or by any persons present on their behalf, or by their pleaders ;

(*b*) allegations made in the plaint or in the written statements (if any) tendered in the suit ;

(*c*) the contents of documents produced by either party.

129. If the Court be 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, to be fixed by the Court, and may compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Court may examine witnesses or documents before framing issues.

130. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the real question or controversy between the parties shall be so made or framed.

Amendment of issues.

Addition of issues.

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.

Of Issues by Agreement of Parties.

131. When 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.

Questions of fact or law may by agreement be stated in the form of an issue.

(*a*) that upon the finding of the Court in the affirmative or the negative of such issue, 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

(*b*) that upon such finding 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*) that upon such finding 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.

132. If the Court be satisfied, after making such enquiry as it deems proper,

Court if satisfied that the agreement was executed in good faith may give judgment.

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a real interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court,

and may, upon the finding or decision on such issue, give judgment according to the terms of the agreement ;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

Disposal of the Suit at the first Hearing.

133. If at the first hearing of a suit it appear that the parties are not at issue on any question of law or of fact, the Court may at once give judgment.

If the parties are not at issue on any question of law or fact.

134. 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 fact, the Court may at once give judgment for or against such defendant, and the suit shall proceed only against the other defendants.

If one of several defendants be not at issue with the plaintiff.

135. When 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 be satisfied that no further argument or evidence than such as the parties can at once supply is required upon any 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 issue,

If the parties are at issue on questions of law or fact.

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:

Court may determine issue and give judgment.

Provided that, where the summons has been issued for the settlement of issues only, the parties are present and none of them object.

Otherwise 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.

136. If the summons has been issued for the final disposal of the suit, and either party fails without sufficient case to produce the evidence on which he relies, the Court may at once give judgment.

If either party fails to produce his evidence, Court may give judgment.

137. After the issue of such summons, if the Court is unable to give judgment at the first hearing of the suit by reason of additional evidence being required, or for any other cause, the Court shall frame the issues requiring to be determined as provided in section 127.

Procedure where Court cannot give judgment at first hearing.

CHAPTER XIII.

Of Adjournments.

138. The Court may, if sufficient cause be 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, or adjourn hearing.

In all such cases 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 not be adjourned at the application of any of the parties or except from day to day when all the witnesses cannot be examined on the same day.

139. If, on any day to which the hearing of the suit is adjourned, the parties or either of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII., or make such other order as it thinks fit.

Procedure if parties fail to appear on day fixed.

140. If either party to a suit to whom time has been granted fails to produce his proofs, 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 a decision of the suit on the record.

Court may proceed notwithstanding either party fails to produce proofs or witnesses.

CHAPTER XIV.

Of Summoning Witnesses.

141. The parties may, after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or after the issue have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court at some reasonable time before the day fixed for such disposal of settlement, as the case may be, summonses to persons whose attendance is necessary or proper either to give evidence or to produce a document.

Summons to attend to give evidence or produce documents.

In any such summons the names of any number of persons may be inserted.

142. The person applying for a summons shall pay into Court such a sum of money as appears to the Court to be reasonable 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.

Expenses of witnesses to be paid into Court on applying for summons.

If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by the Court to which such Court is subordinate.

Scale of expenses.

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.

Tender of expenses to witness.

143. If it appear to the Court that the sum paid into Court on account of the travelling and other expenses of the person summoned in passing to and from the Court is not sufficient to cover such expenses, and for one day's attendance, the Court may direct such further sum to be paid to him 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 goods of the person obtaining the summons, or the Court may discharge the person summoned without requiring him to give evidence.

Procedure where insufficient sum paid in.

If it be necessary to detain the person summoned for a longer period than one day, the Court may from time to time

Expenses if witness detained more than one day.

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 goods of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence.

Time, place and purpose of attendance to be specified in summons.

144. Every summons for the attendance of a person to give evidence or 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 convenient certainty.

Summons to produce a document.

145. Any person, whether a party to the suit or not, 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 cause such document to be produced instead of attending personally to produce the same.

SERVICE OF SUMMONS ON PERSONS REQUIRED TO GIVE EVIDENCE OR PRODUCE DOCUMENTS.

Summons how served.

146. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules for the guidance of officers serving summonses on the defendant shall, *mutatis mutandis*, apply to officer serving summonses under this section.

Time for serving summons.

147. The 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 resonable time for preparation and for travelling to the place at which his attendance is required.

Attachment of property of absconding witness.

148. If the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served in any of the ways hereinbefore specified, the Court, on being certified thereof by the return of the serving officer, and upon being satisfied that the evidence of such person or the production of such document is material, and that he is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring his attendance to give evidence, or produce the document, at a time and place to be named therein, to be affixed on some conspicuous place of the house in which he is dwelling;

and if he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the movable property of the person whose attendance is required, to such amount as the Court deems reasonable, not being in excess of the amount of the costs of attachment and of any fine to which he may be liable under the provisions of section 150.

If witness appears, attachment may be withdrawn.

149. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

150. If the person whose attendance is required does not appear, or appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding the amount in dispute as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment together with the amount of the said fine if any.

If the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Of summoning and examining Strangers to the Suit.

Court may of its own accord summon as witnesses strangers to suit.

151. If the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own accord, 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.

Payment of cost of summons.

152. Whenever any person not a party to the suit is summoned to give evidence or to produce any document in a suit otherwise than on the application of a party to the suit, the cost of summoning such person, including his travelling and other expenses, if not deposited by any party to the suit, shall (if the Court so directs) be paid by the Collector of the District, and shall be costs in the suit, and shall be paid out of any money recovered on account of costs in the suit, whether at the instance of the Government or of any of the parties to the suit, before any other costs in the suit are paid.

ATTENDANCE OF WITNESSES AND CONSEQUENCE OF NON-ATTENDANCE.

Persons summoned to give evidence must attend.

153. Whoever is summoned to appear and give evidence in a suit, must attend at the time and place named in the summons for that purpose.

154. If any person on whom a summons to give evidence or produce a document has been served fails, without lawful excuse, to comply with the summons, the Court may order him to be apprehended and brought before the Court.

Consequences of non-attendance by witness.

If he absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, his property may be attached and sold for the purpose of realizing such fine and costs as the Court may order him to pay, in the manner and subject to the rules provided in sections 148, 149 and 150, with respect to any person on whom the service of a summons cannot be effected.

Explanation.—Before ordering a person to be apprehended it should appear to the Court that there is reason to believe that he has no lawful excuse for his failure to comply with the summons; but it is not necessary for this purpose to institute a formal investigation and come to a determination on evidence adduced.

155. If any person attending or being present in Court refuses, without lawful excuse, to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit him to jail for such time as it thinks fit, unless, in the mean time, he consents to give his evidence or to produce the document.

Consequences of refusal to give evidence or produce documents.

If after the expiration of such time he persists in his refusal, the Court may proceed to deal with him according to the provisions of the Indian Penal Code or any other law for the punishment of persons refusing to give evidence.

Explanation.—"Lawful excuse" means, in this section, such an excuse as, under the Indian Evidence Act, 1872, justifies a refusal to give the evidence or produce the document required.

156. Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document.

Any person present in Court may be called upon to give evidence though not summoned.

Such person shall be liable to be dealt with by the Court in the same manner as a party or witness, as the case may be, would be liable, under any of the provisions hereinbefore contained, to be dealt with for any refusal to obey the order of the Court.

CHAPTER XV.

Examination of Parties and Witnesses.

157. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either on his own behalf or on behalf of any other party to the suit, in the same manner as if he were not a party.

Party to suit appearing in person may be examined as witness.

158. If a party to a suit require to enforce the attendance of any other party thereto as a witness at any stage of the suit, he shall make a special application to the Court for an order requiring such attendance, and if he shows to the satisfaction of the Court sufficient ground in support of such application, an order shall be made accordingly.

Special application to enforce attendance of party as witness.

If he fails to show such ground the Court shall dismiss the application.

159. The Court, before making such order, may cause notice to be given to the party whose attendance is required, fixing a day for him to show cause why he should not attend and give evidence; and may also from time to time, for sufficient reason, enlarge the time for such purpose.

Court may first give notice, fixing a day to show cause why he should not attend.

160. In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and verified in the manner hereinbefore provided for the verification of plaints.

Written declaration in support of cause shown.

161. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court may enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

If no sufficient cause shown, order to issue.

Such order may be served either on the party personally or on his pleader or recognised agent.

162. If the Court thinks it necessary to examine any party to the suit, or to inspect any document in his possession or power, and if he is not

Court may of its own accord summon and examine any party as a witness.

(*a*) unable from sickness or infirmity to attend before the Court to be personally examined, nor

(*b*) exempted by reason of rank or sex from personal appearance in Court,

the Court may, of its own accord, at any stage of the suit, cause him to be summoned to attend as a witness to give evidence or to produce such document, if in his possession or power, on a day to be appointed in the summons, and may examine him as a witness, or cause him to be examined in such other manner as the Court directs.

If he resides at a place distant more than fifty miles from the place at which the Court is held, the Court shall not exercise the power conferred by this section, unless railway communication exists between such places, or within a convenient distance from such places, in which case the Court shall have a discretion as to exercising such power.

163. If any party to the suit is summoned to attend to give evidence or produce a document, and, without lawful excuse, fails to comply with such summons, or, attending or being present in Court, refuses, without lawful excuse, to give evidence or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court

Consequences of party's non-attendance, refusal to give evidence or produce documents.

may in its discretion either pass a decree against him, or make such other order in relation to the suit as the Court thinks fit,

Provided, in the case of a party summoned to attend and failing to do so, that the summons to attend has been duly served upon him :

Nothing in the former part of this section shall be deemed to enable the Court to decree a claim which on the face of the record is not warranted by law.

Illustration.

(*a*) A sues for rent. The Court orders him to attend to give evidence. A without lawful excuse fails to attend pursuant to the order. The Court, if it find the evidence before it sufficient, should, notwithstanding A's failure, make a decree in his favour.

Witness not bound to attend if residing beyond a certain distance from Court.

164. No person shall be bound to attend in person to give evidence in a Court if he resides at a place distant more than fifty miles from the place at which the Court is held, unless the Court specially orders that he shall appear : nor in any case if he resides at a place distant more than one hundred miles from the place at which the Court is held :

Provided that, if Railway communication exists between the place at which he resides and the place where the Court is held, or within a convenient distance from such places, the Court shall have a discretion as to making such order.

Rules as to witnesses to apply to parties summoned.

165. Whenever a party to a suit is summoned as a witness, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

Reasons to be recorded, of order for attendance of witness at distance exceeding 50 miles.

166. The Court, on making an order for the attendance of a witness residing at a distance exceeding fifty miles by the ordinary means of communication from the place where the Court is held, shall record the reasons for making such order.

Examination of Witnesses.

Witnesses to be examined at hearing in open Court.

167. On the day appointed for the hearing of the suit, or any other day to which the hearing is adjourned, the evidence of the witnesses in attendence shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

A witness may for sufficient cause be examined immediately.

168. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his examination should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the examination of such witness forthwith, or on any day fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence.

The witness shall be examined, and his evidence shall be taken down in writing, in the manner hereinafter provided for the examination of witnesses ; and the evidence so taken down may be read in evidence at any hearing of the suit.

How evidence shall be taken in appealable cases.

169. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language in use in proceedings before 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 shall, if necessary, be corrected, and shall be signed by the Judge.

Local Government may direct evidence to be taken down by Judge with his own hand.

170. The Local Government may order that the evidence of witnesses in any district, or in any class of Courts in any District, shall be taken down by the Judge with his own hand.

Any such order may be cancelled.

When the Judge is prevented by any sufficient reason from taking down the evidence of any witness, he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

When witness may require his deposition to be interpreted.

171. If the evidence is taken down in a language different from that in which it was 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 was given.

When evidence may be taken in English.

172. If in a Court in which English is not the language in use, the parties to the suit who are present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in that language, the Judge may take down the evidence in English with his own hand.

Any particular question and answer may be taken down.

173. It shall be in the discretion of the Court to take down or cause to be taken down, any particular question and answer if there appears any special reason for so doing, or if any party to the suit or his pleader so requires.

Questions objected to.

174. If any question put to a witness be objected to, the question, whether the Court allow or forbid it to be put, shall be taken down.

The answer shall also be taken down if the Court allow the question to be put ; and the objection and the name of the party making it shall be noticed in taking down the evidence, together with the decision of the Court upon the objection.

Remarks on demeanour of witnesses.

175. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

176. In cases in which 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 with his own hand, and shall form part of the record.

Memorandum when evidence is not taken down by Judge.

177. 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 with his own hand, and shall form part of the record.

Memorandum of evidence in unappealable cases.

178. If the Judge be prevented from making a memorandum as above required, he shall record the reason of his inability to do so; and in cases in which an appeal is not allowed, he shall cause such memorandum to be made in writing from his dictation in open Court and shall sign the same, and such memorandum shall form part of the record.

Judge unable to make such memorandum to record reason of his inability.

CHAPTER XVI.

Of Judgment and Decree.

179. The Court, after inspecting the documentary evidence, and examining or hearing examined the witnesses of the parties, and hearing the parties in person or by their respective pleaders, 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.

180. The judgment shall be written in the Judge's mother-tongue:

Provided that, if such mother-tongue be not English, and the Judge be sufficiently conversant with English to be able to write a decision in that language, and prefer so to write it, the judgment may be written in English.

Judgment to be written in Judge's mother-tongue.

Proviso.

181. Whenever the judgment is written in any language other than that in use in proceedings before the Court, the judgment shall be translated into the language in ordinary use in such proceedings, and the translation shall also be signed by the Judge:

Provided that, if the judgment be written in English, it shall not be necessary to make a translation of it in suits in which an appeal is not allowed, unless any of the parties require such translation.

Translation of judgment.

182. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it.

Judgment to be dated and signed.

183. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

Judgments of Small Cause Courts.

The judgments of all other Courts shall, in addition to the points for determination and the decision thereon, contain the reasons for such decision.

Judgments of other Courts.

184. In suits in which issues have been framed, the Court shall state its finding of decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Court to state its decision on each issue.

Exception.

185. The decree shall bear date the day on which the judgment was pronounced, and shall be signed by the Judge and sealed with the seal of the Court.

Date of decree.

186. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register of the suit, and shall specify clearly the relief granted or other determination of the suit.

Contents of decree.

The decree shall also state the amount of costs incurred in the suit and by what parties and in what proportions they are to be paid.

If the decree is found to be at variance with the judgment, the Court shall of its own motion or on the application of any of the parties, amend the decree so as to bring it into conformity with the judgment.

Power to amend decree.

187. When the suit is for the recovery of immovable property with specified boundaries, or of the possession of such property, if the decree be for the recovery of a portion only of such property, or the possession of such portion, it shall specify the boundaries of the property affected by the decree.

Decree for recovery of portion of immovable property.

188. When the suit is for movable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree for delivery of movable property.

189. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court thinks proper 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

In suits for money decree may order certain interest to be paid on principal sum adjudged.

prior to the date of suit, with further interest on the aggregate sum so adjudged, and on the costs of the suit, from the date of the decree to the date of payment.

Payment by instalments.

190. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments with or without interest.

Court may order payment by instalments.

And on the application of the defendant at any time after decree, the Court may order that the amount of the decree be paid by instalments on such terms as to the payment of interest, the attachment of the proprety of the defendant, or the taking of security from him, or otherwise as it thinks fit.

In suits for land, Court may decree payment of mesne profits with interest.

191. When the suit is for land or other property paying rent, the Court may provide in the decree for the payment of mesne profits or rent in respect of such property from the date of the suit until the date of delivery of possession to the party in whose favour the decree is made, or until the expiration of one year from the date of the decree (whichever is soonest), with interest thereupon at such rate as the Court thinks fit.

Explanation.—'Mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom.

Court may determine amount of mesne profits prior to passing decree, or may reserve enquiry.

192. When the suit is for land and for mesne profits which have accrued on the land during a period prior to the date of suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the land and direct an enquiry into the amount of mesne profits, and dispose of the same on further orders.

Administration-suit.

193. When the object of the suit is to obtain an account of any property and to have the same duly administered under the decree of the Court, the Court, before making its final decree, shall order such accounts and enquiries to be taken and made, and give such other directions, as it thinks fit for carrying out such object.

Suit for dissolution of partnership.

194. When the object of the suit is to obtain the dissolution of a partnership, the Court, before making its final decree, may pass an order fixing the day on which the partnership shall stand dissolved and appointing a receiver of the partnership state and effects, and directing such accounts to be taken and other acts to be done as it thinks fit for carrying out such object.

If set-off be allowed.

195. If the defendant has set-off the amount of a debt against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff, and what amount, if any, is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Effect of decree.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Certified copies of decree and judgment to be furnished.

196. Certified copies of the judgment and decree, or of either of them, shall be furnished to the parties on application to the Court, and on the production of the necessary stamp-paper for making such copies where a stamp is required by law.

CHAPTER XVII.

Of Costs.

Costs of applications.

197. When disposing of any application under this Code the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Judgment to direct by whom costs are to be paid.

The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Power of Court as to costs,

198. The Court shall have full power to give and apportion costs in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that the costs of every application or suit shall, unless the Court otherwise directs, follow the event. And if the Court otherwise directs, it shall state its reasons in writing.

Costs may be set-off against sum admitted or found to be due.

199. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Interest on costs.

Costs may be paid out of or charged on subject-matter of suit.

200. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of or charged upon the subject-matter of the suit.

Questions of costs when re-heard or appealable.

201. There shall be no re-hearing or appeal on a question solely relating to costs except where it distinctly appears on the face of the proceedings either.

(*a*) that the costs are payable out of or chargeable on some property; or

(*b*) that the mode in which the costs have been given is inconsistent with some enactment for the time being in force.

Illustration.

A, an incumbrancer upon a certain estate, sues to compel the payment of his charge. The Court decrees him his principal and interest, but refuses his costs. A may appeal against this refusal, for every incumbrancer has a lien for his costs on the property charged.

CHAPTER XVIII.

Of the Execution of Decrees.

Decree for immovable property.

202. If the decree be for the delivery of any immovable property, possession thereof shall be delivered over to the party to whom it has been adjudged.

When the immovable property is a share of the dwelling-house of an undivided Hindú family, the decree shall be executed with due regard to the customs of the country, and so as to avoid unnecessary annoyance to the members of the family.

Decree for specific movable.

203. If the decree be for any specific movable, it shall be enforced by the seizure, if practicable, of the moveable and by the delivery thereof to the party to whom it has been adjudged, or by the imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until the further order of the court, or by both imprisonment and attachment, if necessary:

Provided that, in a suit for the recovery of a wife or for restitution of conjugal rights, a decree for the plaintiff shall be declaratory and shall be enforced only by attachment in case of disobedience.

Enforcement, by attachment or imprisonment, of decree for specific performance.

204. When the party against whom a decree for the specific performance of a contract has been made has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

The imprisonment and attachment may be continued until the party against whom the decree is made complies with the terms of it, or for such time as the Court may order:

Provided that no person shall be imprisoned under this section for a longer period than six months.

Order for payment of money as an alternative.

205. Payment of a sum of money ordered to be paid as the alternative to some other relief granted by the decree shall be enforced in manner hereinafter provided for the execution of a decree for money.

Decree for money.

206. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both.

Orders for payment.

207. Every order under this code for the payment of money by way of compensation or otherwise shall be enforced in the same manner as a decree for money.

Enforcement of decree for money against a plaintiff.

208. If in any suit a decree for money is passed against a plaintiff, the decree may be enforced against him in the same manner as a decree may be enforced againt a defendant.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

209. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the party in whose favour the decree is made, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his movable property within the same limits.

Warrant against movable property may be general or special.

210. If the warrant be directed against the movable property of the judgment-debtor, it may be general against any of his movable property wherever it may be found within the local limits of the jurisdiction the Court, or special against any of his movable property within the same limits which is indicated by the party in whose favour the decree is made.

Decree for execution of conveyances, or endorsement of negotiable instruments.

211. If the decree be for the execution of a conveyance, or for the endorsement, of a negotiable instrument, and the party ordered to execute such conveyance or endorse such instrument neglects or refuses to comply with the order, the party in whose favour the decree is made may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver a copy of the draft to the party so ordered to execute or endorse, and tender another copy of the same to the Court for execution upon the proper stamp-paper if a stamp is required by law.

The court shall thereupon execute such draft-conveyance or endorsement, or, if necessary, may alter the same so as to bring it into accordance with the terms of the decree, and execute the conveyance or endorsement so altered:

Provided that, if any party object to the draft so tendered as aforesaid, his objections shall, within eight days of such delivery, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute the draft in accordance therewith.

Form and effect of execution of conveyance by Court.

212. The execution of a conveyance or the endorsement of a negotiable instrument by the Court under the last preceding section may be in the following form—"*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.*—" or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

Decree against representative of deceased for money to be paid out of deceased's property.

213. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property.

If no such property can be found and the defendant fails to satisfy the Court that he has duly applied such property of deceased as is proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

Decree against surety.

214. Whenever a person has, before the passing of a decree, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant.

Property liable to attachment and sale in execution of decree.

215. 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 the capital or joint-stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the defendant, and whether the same be held in the name of the defendant 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*) necessary wearing apparel:

(*b*) books of account:

(*c*) mere rights to sue:

(*d*) the right to perform the service of an idol:

(*e*) stipends allowed to Military and Civil pensioners of Government:

(*f*) the salary of a servant of Government:

(*g*) an expectancy of succession by survivorship:

(*h*) a right to future maintenance.

Provided also, that nothing in this section shall give any Court of Small Causes power to attach and sell, in execution of a decree passed by such Court, any property which Courts of Small Causes are prohibited by law from attaching and selling in execution of their decrees.

Payment of monies under decree to be made into Court.

216. All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree unless such Court or the Court which passed the decree otherwise directs.

Adjustment of decree to be made through Court.

217. Except as provided in the last preceding section, no adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court, or be certified to the Court by the person in whose favour the decree was passed or to whom it may have been transferred.

Illustration.

A obtains a decree against B for Rs. 1,000, and causes an officer of Court to arrest B under a warrant. B pays the officer the Rs. 1,000. This is an adjustment made through the Court.

Application for Execution.

Application for execution.

218. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree, or to the Court whose duty it is, under this Code or any other law, to execute the decree, to execute the same.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted unless the Court is satisfied that on the former application due diligence was used to procure complete execution of the decree.

And no such subsequent application shall be made after the expiration of twelve years from any of the following dates (namely)—

(*a*) the date of the decree sought to be enforced, or,

(*b*) where the decree directs the payment of money or the delivery of property by instalments, the date of the default in paying or delivering the instalment in respect of which the applicant seeks to enforce the decree, or

(*c*) where the decree is for money and the holder of the decree and the judgment-debtor have entered into an agreement in writing that the amount decreed, with such interest (if any) as may be therein mentioned, shall be discharged by such instalments as, if duly paid, will discharge the said amount and interest at some time within thirty years from the date of the decree, and such agreement has been filed in Court,—the date of the default in paying the instalment in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent any holder of a decree from applying for execution of the same 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.

Any one of several decree-holders may apply.

219. If a decree has been passed in favour of more persons than one, any one or more of such persons may 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 representatives in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application by transferee of decree.

220. If a decree be transferred by assignment or by operation of law from the party in whose favour it was passed to any other person, the transferree may apply for its execution to the Court which passed it; and if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions, as if the application were made by the party in whose favour the decree was passed.

Where a decree against several persons has been transferred to one of them, nothing in this section shall be deemed to authorize him to have it executed against the others.

Transferee to hold subject to equities enforceable against transferor.

221. Every transferree of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the transferor.

Cross-decrees.

222. If cross-decrees between two parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a 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 on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are (*a*) decrees made by the same Court; (*b*) decrees sent to the same Court for execution, and (*c*) decrees of which one is made by the Court and the other is sent to the same Court for execution; but not (*d*) decrees of which one is made by one Court and the other by another Court, and not sent for execution to the former Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees.

Explanation III.—This section does not apply unless—

(*e*) both decrees are capable of execution at the same time:

(*f*) the parties are the same; and

(*g*) the sums due under the decrees are definite.

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 section.

(*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 section.

(*c*) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

Cross-claims under same decree.

223. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, satisfaction for each sum shall be entered on the decree.

Stay of execution pending suit between decree-holder and judgment-debtor.

224. If a suit be 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 (if it appear just and reasonable to do so) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

If person against whom decree made die before execution, application may be made against his representative or estate.

225. If any person against whom a decree has been passed dies before the decree has been fully executed, application may be made for its execution against the legal representative or the estate of the deceased.

Such representative shall be liable to the extent of the property of the deceased which has come to his hands and has not been duly disposed of.

Notice of application to be given to representative.

226. Notice of an application under the last preceding section shall be given to the person named therein as the legal representative of the deceased, or as the person in charge of the estate; and if the Court, after hearing such representative or other person against the application, thinks proper to grant the same, the execution may be proceeded with against such representative or estate.

Execution of decree against representative.

227. If a decree be ordered to be executed against the legal representative of the party against whom the decree was made, it shall be executed in the manner provided in section 213 for the execution of a decree for money to be paid out of the property of a deceased person.

Contents of application for execution of decree.

228. The application for the execution of a decree shall be in writing, and shall contain in a tabular form the following particulars, namely,

(*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 what adjustment of the matter in dispute has been made between the parties subsequently to the decree;

(*f*) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;

(*g*) the amount of costs, if any, awarded;

(*h*) the name of the person against whom the enforcement of the decree is sought, and

(*i*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

229. If the application be for the attachment of any immovable property belonging to the defendant, it shall contain at the foot a description of the property reasonably sufficient to identify it, and also a specification of the share or interest of the defendant therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immovable property.

230. If the property be land which, whether it pays revenue to Government or not, is registered in the Collector's office, the application for attachment shall be accompanied by an authenticated 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, and (where registered) the shares of the registered proprietors.

When application must be accompanied by extract from Collector's register.

231. An application for an attachment of the movable property of the defendant or any part thereof, may be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of the same; or the decree-holder may apply for a general attachment of the movable property of the defendant wheresoever the same can be found, to the amount of the decree and costs.

Application for attachment of movable property may be general, or may be accompanied with inventory of property to be attached.

232. The Court, on receiving an application for the execution of a decree containing the particulars mentioned in section 228, or such of them as may be applicable to the case, shall enter in the register of the suit a note of the application and the date on which it was made.

Procedure on receiving application for execution of decree.

If the particulars do not correspond with the decree, the Court shall not reject the application on the ground of informality; but it shall either return the application for correction to the person making it, or shall, with his consent, cause the necessary correction to be made.

Procedure if particulars do not correspond with decree.

If the application be admitted, the Court shall order execution of the decree according to the nature of the application.

If application admitted, execution ordered.

MEASURES REQUIRED IN CERTAIN CASES PRELIMINARY TO THE ISSUE OF THE WARRANT.

233. In each of the following cases (namely)—

(*a*) if more than one year has elapsed between the date of the decree and the application for its execution, or

(*b*) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made,

the Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him:

Notice to show cause why decree should not be executed.

Proviso. Provided that no such notice shall be necessary.

(*c*) in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution: or

(*d*) in consequence of the application being against the legal representative of the party against whom the decree was made, if upon a previous application for execution against the same person, the Court has ordered execution to issue against him.

Explanation.—In this section the phrase "the Court" means the Court by which the decree was passed, unless when the decree has been sent to another Court for execution, in which case it means such other Court.

234. If the person to whom notice is issued under the last proceeding section 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.

Procedure after issue of notice.

If he offers any objection to the enforcement of the decree, the Court shall pass such order as it thinks fit.

235. If the application is for a general attachment of the movable property of the party liable under the decree, the Court may, before issuing an order for such attachment, require the applicant to give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any person other than the party liable as aforesaid.

On application for general attachment of movable property, security may be required.

236. Before granting the order for a general attachment, or, at the instance of the holder of the decree, at any time before its complete execution, the Court may summon the person against whom the application is made and examine him as to the property liable to be seized in satisfaction of the decree.

Power to make enquiries as to the property to be attached.

237. The Court may, of its own motion or at the instance of any person interested in the enquiry, summon any other person whom it thinks necessary and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property.

Power to summon and examine other persons as to property liable to be seized.

238. Whenever a summons is issued for the attendance of a party to a suit, or of any other person, at any time after judgment, the rules applicable to summoning and examination of parties and witnesses after issue recorded shall apply to the party or witnesses so summoned.

Summoning and examination of parties and witnesses after judgment.

ISSUE OF THE WARRANT.

239. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

Warrant when to issue.

240. The warrant for the execution of the decree shall bear the date of the day on which it is issued, and shall be signed by the Judge or the Registrar or Clerk of the Court, and shall be sealed with the seal of the Court, and delivered to the proper officer to be executed.

Date, signature, seal, and delivery.

241. If the warrant be for the arrest of the defendant, it shall direct the officer entrusted with the execution of the warrant to bring the defendant before the Court.

Warrant for arrest to direct defendant to be brought up.

242. A day shall be specified in the warrant on or as soon as possible after which it is to be returned.

Latest day for return of warrant to be specified.

243. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed; or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

Endorsement on warrant.

OF THE EXECUTION OF DECREES FOR IMMOVABLE PROPERTY.

244. If the decree be for any immovable property in the occupancy of the defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit in which the decree was passed, the Court shall order delivery to be made by putting the party to whom the property has been adjudged, or any person whom he appoints to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of immovable property in occupancy of defendant or of some person under him.

245. If the decree be for any immovable property in the occupancy of a tenant or other person entitled to occupy the same, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property.

Delivery of immovable property when in occupancy of tenant.

246. If the decree be for the partition of an estate, or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made according to the rules (if any) in force in the District for the partition of an estate paying revenue to Government.

Partition of estate or separation of share.

247. If in the execution of a decree for any immovable property, the officer entrusted with the execution of the warrant is resisted or obstructed by any person, the person in whose favour the decree was made may complain to the Court at any time within one month from the time of such resistance or obstruction.

Procedure in case of obstruction to execution of decree.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

248. If the Court is satisfied that the obstruction or resistance was occasioned by the defendant or by some person at his instigation, on the ground that the property is not included in the decree or on any other ground, the Court shall enquire into the matter of the complaint and pass such order as it thinks fit.

Procedure in case of obstruction by defendant or at his instigation.

249. If the Court is satisfied that the resistance or obstruction complained of was without any just cause, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any proceedings to which such defendant or other person may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, commit the defendant or such other person to jail for a term not exceeding thirty days.

Procedure when obstruction continues.

250. If the resistance or obstruction to the execution of the decree has been occasioned by any person other than the defendant, claiming in good faith to be in possession of the property on his own account or on account of some person other than the defendant, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

Procedure in case of obstruction by claimant in good faith, other than defendant.

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

251. If any person other than the defendant is dispossessed of any property in execution of a decree, and such person disputes the right of the holder of the decree to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the defendant, and that it was not included in the decree,

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

or that, if it was included in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the holder of the decree as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like power as if a suit for the property had been instituted by the applicant against the holder of the decree under the provisions of chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

In hearing applications under this section the Court shall confine itself to the grounds of dispute above specified.

Nothing in this section applies to a person to whom the defendant has transferred the property after the institution of the suit in which the decree is made.

Orders passed under sections 250 and 251 to have force of decrees, and to be subject to appeal.

252. The order passed under either of sections 250 and 251 shall be in the nature of, and shall have the same force as, a decree in a suit, and shall be subject to the same conditions as to appeal or otherwise.

No fresh suit shall be entertained in any Court between the same parties or persons claiming under them, in respect of the same right to sue :

Provided that nothing in this or the last preceding section shall prevent any person, instead of applying to the Court as provided therein, from instituting a suit to establish his right to the property of which he considers himself to have been wrongfully dispossessed.

Of the Execution of Decrees for Money by Attachment of Property.

(a) *Attachment of Movable Property.*

Attachment of property in execution of decree for money.

253. If the decree be for money, and the amount of the decree is to be levied from the property of the person against whom the decree has been passed, the Court shall cause the property to be attached in the manner hereinafter provided.

Explanation.—A decree for mesne profits or any other matter, the amount of which, in money, is to be subsequently determined, is a decree for money within the meaning of this section.

Attachment of movable property in possession of defendant.

254. If the property be movable property in the possession of the defendant, other than the property mentioned in section 257, the attachment shall be made by actual seizure, and the proper officer shall (except in the case of perishable articles, which he may sell at once) 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.

If the person executing a process directing a general attachment of movable property, has gained access to a house, he may remove the lock from the door of any room in which he has reasonable grounds for believing any such property to be.

Attachment of movable property of defendant subject to lien.

255. If the property be movable property to which the defendant is entitled subject to the possession of some other person under a lien or some other right or title, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

Illustrations.

(*a*). A, a shipowner, mortgages his ship and the mortagagee enters into possession. B obtains a decree for money against A. The interest of A in the ship may be attached under this section.

(*b*). A and B are partners. B alone is in actual possession of partnership-property. C obtains a decree for money against A. The partnership property may be attached under this section, but the attachment must be limited to A's share therein.

Prohibitory order in case of movable property not in defendant's possession.

256. In the case of movable property not in the possession of the defendant, a copy of the order shall be fixed upin some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the person in possession of the property.

Attachment of debts and shares.

257. If the property be a debt, not secured by negotiable instrument or be a share in any public Company or Corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debt and the debtor from making payment thereof to any person until the further order of the Court, or prohibiting the person in whose name the share may be standing from making any transfer of the share or receiving payment of any dividend thereon, and the proper officer of the Company or Corporation from permitting any such transfer or making any such payment, until such further order.

Notification of prohibitory order in case of debt.

258. If the property be a debt, a copy of the order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall also be delivered or sent registered by post to the debtor, or to each debtor when there are more debtors than one :

Provided that, where the debt is due from a public Company to one of its servants, the copy so sent registered shall be addressed to the agent or manager of the Company at its principal office in British India.

And in case of shares in any Company or Corporation.

259. If the property be a share in the capital or joint-stock of any public Company or Corporation, a copy of the order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall also be delivered or sent registered by post to the proper officer of the Company or Corporation.

Attachment of negotiable instruments.

260. If the property be a negotiable instrument not in deposit in a Court, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court

261. If the property be money or any security in deposit in any Court or in the hand of any officer of Government, which is or may become payable or deliverable to the defendant or on his behalf, the attachment shall be made by a notice to such Court or officer, requesting that the money or security and any interest or dividend becoming payable thereon may be held subject to the further orders of the Court from which the notice issues :

Attachment, by notice, of money deposited in Court or with Government officer.

Provided that, if such money or security is in deposit in a Court, any question of title or priority arising between the decree-holder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment or otherwise, shall be determined by the Court in which such money or security is in deposit.

Proviso.

(b) Attachment of Immovable Property.

262. If the property be immovable, the attachment shall be made by a written order prohibiting the defendant from alienating the property in any way, and all persons from receiving the same by purchase, gift or otherwise.

Attachment of immovable property.

263. The order shall be read aloud at some place on or adjacent to such property, and a copy of the order shall be fixed up in a conspicuous part of the Court-house.

Prohibitory order in case of immovable property.

When the property is land or any interest in land, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

264. When an attachment has been made by actual seizure or by written order as aforesaid, and, in the case of an attachment by written order, when it has been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortage, or otherwise, and any payment of the debt or dividend or share to the defendant during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

265. When a debtor is prohibited, under section 257, from making payment of his debt to the party to whom the money is owing, he may pay the amount into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Payment by a debtor who has been prohibited from making payment to his creditor.

266. If the property attached is money or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such money or currency-notes, or a sufficient part thereof, be paid over to the party entitled under the decree to receive the same.

Court may direct money or currency-notes attached to be paid to party entitled.

267. The Court may direct that any immovable or movable property, not being money or currency-notes, which has been attached, or such portion thereof as may seem necessary for the satisfaction of 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.

Or that immovable or movable property attached be sold, and proceeds be so paid.

268. When the property attached is land, if the defendant can satisfy the Court that there is reasonable ground to believe that the amount of the decree may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the defendant, the Court may, on the application of the defendant, postpone the sale for such period as it thinks proper, to enable him to raise the amount.

Postponement of sale of land to enable defendant to raise amount of decree.

In such case the Court shall grant a certificate to the defendant authorizing him within a period to be mentioned therein to sell or mortgage the land or to let it on lease.

Where such certificate has been granted and so long as it remains in force, the provisions of section 233 shall not apply, and the year mentioned in that section, clause (*a*), shall be computed from the date of the expiry of the certificate.

269. When the property attached consists of debts due to the defendant or of any immovable property, the Court may if it thinks fit, instead of ordering the sale of the property, appoint a Manager thereof, with power to sue for the debts, and to collect the rents or other receipts and profits of the property, and to execute such instruments in writing as may be necessary, and to pay and apply such rents, profits or receipts towards the payment of the amount of the decree and cost.

Appointment of manager when property attached consists of debts or immovable property.

Instruments executed in his official capacity by a Manager appointed under this section shall be of the same force as if executed by the actual owner of the property.

270. When a Manager is appointed under the last preceding section the Court may grant him as full powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as the owner himself possesses, or such of them as the Court thinks fit.

Powers and duties of Manager.

Every Manager so appointed shall—

(*a*) give such security, if any, as the Court thinks fit duly to account for what he shall receive in respect of the property ;

(*b*) pass his accounts at such periods and in such form as the Court directs ;

(*c*) pay the balance due from him thereon ;

(*d*) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties ;

(*e*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

271. When, in any District in which sales of land paying revenue to Government, or of land of which the revenue has been assigned or redeemed, in execution of decrees for money are ordinarily made by the Collector, the property attached consists of such land or of a share in such land, and the Collector represents to the Court that the public sale of the hand 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 make provision for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share.

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

Whenever such authority is given, the Court may order that security be taken from the defendant for the amount of the decree.

Court may order security to be taken.

272. The Local Government may from time time, with the sanction of the Government General in Council, make special rules for any territory, imposing conditions in respect to the sale of land in execution of decrees for money; and if, when this Code comes into operation in any territory, any such rules are in force therein, the Local Government may continue such rules in force, or it may from time to time modify the same with the sanction of the Governor General in Council.

Local rules as to sales of land in execution of decrees for money.

All rules so made or continued, and all modifications of such rules, shall be published in the local official Gazette or (where there is no such Gazette) in the *Gazette of India*, and shall thereupon have the force of law.

273. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment.

Order for withdrawal of attachment after satisfaction of decree.

If the defendant so desire, and deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment, and such steps shall be taken as are necessary for staying further proceedings in execution of the decree.

Of Sales in Execution of Decrees.

274. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in the next following section, shall be made by public auction in manner hereinafter mentioned.

Sales by whom to be conducted and how made.

No such sale shall be made on a holiday or on any other day on which the Court is closed.

275. If the property to be sold be a negotiable instrument or a share in any public Company or 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 at the market-rate of the day.

Rule as to negotiable securities and shares in public Companies.

276. If the property to be sold is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Collector of the District in which the land is situate has not been prohibited by the Local Government from selling land in execution of decrees, the sale shall be conducted by such Collector on the requisition of the Court.

Sale, by Collector, of lands paying revenue to Government.

277. When any property, whether movable or immovable, is ordered to be sold by public auction in execution of a decree, a proclamation of the intended sale shall be made in the current language of the district. Such proclamation shall specify

Proclamation of sales by public auction.

(*a*) the time and place of sale;

(*b*) the property to be sold;

(*c*) the revenue assessed upon the estate or part of the estate, when the property to be sold is an estate or a part of an estate paying revenue to Government;

(*d*) the amount for the recovery of which the sale is ordered; and

(*e*) any other particulars that the court thinks necessary;

The proclamation shall also describe, as fairly and accurately as possible, everything which it is material for the purchaser to know in order to judge of the nature and value of the property.

278. The proclamation shall be made on the spot where the property is attached by beat of drum or any other customary mode; and a written notification to the same effect shall be affixed in the Court-house of the Judge who has ordered the sale, and in some conspicuous spot in the town or village in which the attachment has taken place.

Mode of making proclamation.

When the property ordered to be sold consists of land or of any right or interest in land, a written notification shall also be affixed in the office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District when the Court which ordered the sale is subordinate to such Court.

If the Court so direct, such notification shall also be published in the official Gazette and in some local newspaper.

279. Except in the case of articles of a perishable nature (which may be sold at once) no sale under this Chapter shall 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 movable property, calculated from the date on which the notification has been affixed in the Court-house of the Judge ordering the sale.

Time of sale.

280. The usual process for attachment and sale, when the property to be attached consists of any movable property other than a debt, may be issued either successively or simultane-

Process for attachment and sale may in certain cases be simultaneous or otherwise.

ously as the Court directing the sale in each instance thinks fit.

Payment for movable property sold.

281. If the property sold be movable, the price of each lot shall be paid for 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 sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same and the sale shall become absolute.

Deposit by purchaser of immovable property.

282. If the property sold be immovable, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum 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 sold.

Confirmation of sale.

283. No sale of immovable property shall become absolutely binding on the vendor until it has been confirmed by the Court.

Time for payment in full.

284. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day.

Procedure in default of payment.

285. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to 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.

Notification on re-sale of immovable property.

286. Every re-sale of immovable 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 notification in the manner and for the period hereinbefore prescribed for the sale.

Defaulting purchaser answerable for loss by re-sale.

287. The deficiency of price (if any) which happen on a re-sale under section 282 or section 285, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

If decree-holder purchase, amount of decree may be taken as payment.

288. The holder of the decree in execution of which the property is sold, may with the express permission of the Court (but not otherwise) purchase the property,

and in such case the amount of his decree may be taken as payment in whole or in part, as the case may be, of the purchase-money.

Co-sharer of a share of undivided estate sold in execution may claim share at sale-price.

289. When the land sold in execution of a decree is a share of an undivided estate, if the lot has been knocked down to a stranger, any co-sharer other than the party liable for the amount of the decree may claim to take the share sold at the sum at which the lot was so knocked down :

Proviso.

Provided that the claim be made before sunset on the day of sale and that the claimant repay to the purchaser the amount of his deposit and fulfil all the conditions of the sale.

Irregularity not to vitiate sale of movable property but any person injured may sue.

290. No irregularity in the sale of movable 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 for the recovery of the specific property and for compensation in default of such recovery.

Sale of land not set aside on ground of irregularity unless substantial injury.

291. Any person whose interest in immovable property has been sold under this Chapter may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

But no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

The purchaser at any such sale may apply to the Court to set aside the sale on the ground that the person whose interest in the property purported to be sold had no such interest.

Effect of objection being disallowed and of its being allowed.

292. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit shall lie to set aside or render void an order passed under this section.

If sale set aside, price to be returned to purchaser.

293. When a sale of immovable property is set aside under section 292,

or when it is found that the property sold did not belong to the judgment-debtor and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money, with or without interest, as the Court may direct.

Payment of the purchase-money and of the interest (if any) allowed by the Court shall be enforced under the rules provided by this Chapter for the execution of a decree for money.

Certificate to be granted to purchaser of immovable property.

294. When a sale of immovable property has become absolute in manner aforesaid, if the person declared the purchaser of the property supplies paper stamped as if it were a conveyance of the same, the Court shall grant him a certificate thereon, to the effect that he has purchased the defendant's interest in the property sold, and such certificate shall be deemed to be a valid transfer of such interest.

Certificate to state the name of actual purchaser.

295. The certificate shall state the name of the person who, at the time of sale, is declared to be the purchaser.

Benámí purchaser not recognized.

No other person shall maintain any claim against the certified purchaser on the ground that the purchase was made on behalf of such other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of movable property belonging to defendant actually seized.

296. When the property sold is any movable property in the possession of the defendant, or to the immediate possession of which he is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of movable property to which defendant is entitled subject to lien.

297. When the property sold is any movable property to which the defendant is entitled subject to the possession of some other person under a lien or some other right or title, the delivery 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.

Delivery of immovable property in the occupancy of defendants.

298. When the property sold is any immovable property in the occupancy of the defendant or of some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit in which the decree was passed, the Court shall order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immovable property in the occupancy of tenant.

299. When the property sold is immovable property in the occupancy of a tenant or other person entitled to occupy the same, the Court shall order delivery thereof 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 in such other mode as may be customary, at some convenient place, that the interest of the defendant has been transferred to the purchaser.

Delivery of debts and of shares in public Companies.

300. If the property be a debt not secured by a negotiable instrument, or be a share in any public Company, 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, or receiving payment of any dividend or interest thereon, and the Manager, Secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

Delivery of negotiable instruments of which actual seizure has been made.

301. When the property sold consists of a negotiable instrument of which actual seizure has been made, the same shall be delivered to the purchaser.

Transfer of negotiable instruments and shares.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing, is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :—"*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.*"

Until the transfer of such 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 endorsement made or document executed or receipt signed as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

Resisting or obstructing purchasers in obtaining possession of immovable property.

303. If the purchaser of any immovable property sold in execution of a decree be resisted or obstructed by the defendant or any one on his behalf, in obtaining possession of the property, the provisions of this Chapter relating to resistance or obstruction to a party in whose favour a decree has been made in obtaining possession of the property adjudged to him, shall be applicable.

Obstruction by claimant other than defendant.

304. If it appear that the resistance or obstruction to the delivery of possession was occasioned by any person other than the defendant, claiming a right to the possession of

the property sold, as proprietor, mortgagee, lessee, or under any other title, or if, in the delivery of possession to the purchaser, any such person claiming as aforesaid be dispossessed,

the Court, on the complaint of the purchaser, or of such person claiming as aforesaid, shall enquire into the matter of the complaint and pass such order as it thinks fit.

The party against whom such order is passed shall be at liberty to bring a suit to establish his right to the property at any time within one year from the date of such order.

Attaching creditor to be first paid out of assets realized.

305. Whenever assets are realized by sale or otherwise in execution of a decree, the person entitled to be first paid thereout, after deducting the cost of the realization, is the holder of the decree on whose application the property producing such assets was first attached:

Provided that such attachment was in execution of a decree for money then capable of being completely executed.

No subsequent attachment of the same property by another party in execution of another decree, whether of a prior or of a later date, shall affect the title of the holder of the decree first above referred to, to be paid out of the said proceeds.

Nothing in this section affects any right of the Crown.

If all or any of such assets be 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.

Surplus to be rateably distributed among certain execution creditors.

306. The surplus (if any) remaining after the claim of the person on whose application the property was first attached has been satisfied in full from the assets, shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees for money against the same defendant and may not have obtained satisfaction thereof.

Proviso where property is sold subject to a mortgage.

Provided that, when any property is sold subject to a mortgage and the mortgagee has obtained a decree for the money due thereon, he shall not be entitled to share in any surplus arising from such sale, unless he waives his right as mortgagee.

Court may order proceeds of property attached under a decree obtained fraudulently, to be paid in satisfaction of another decree.

307. If it appear to the Court upon the application of the holder of a decree, that any other decree under which property has been attached was obtained by fraud or other improper means, the Court may either order that the proceedings be stayed and refer the parties to a regular suit, or, if it find the materials before it sufficient for deciding the case at once, may order,

(*a*) if such other decree be a decree of the same Court, that the applicant shall be satisfied out of the proceeds of the property attached so far as the same may suffice for the purpose ;

(*b*) if the other decree be a decree of another Court, that the proceedings be stayed to enable the applicant to obtain a similar order from the Court by which the decree was made.

Explanation—A decree obtained in consequence of a mere error in procedure is not obtained by improper means within the meaning of this section.

OF THE EXECUTION OF DECREES BY IMPRISONMENT.

Place of defendant's imprisonment.

308. The imprisonment of the defendant in execution of a decree may be in the jail of the district in which the Court ordering the imprisonment is held, or, when such jail does not afford suitable accommodation, in any other jail, though not in such district, which the Local Government may appoint for the confinement of persons ordered to be imprisoned by the Courts of such district.

Defendant's subsistence-money.

309. When the defendant is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as it consider sufficient with reference to the class to which he belongs.

But (except as provided in the next succeeding section) such allowance shall not exceed four annas per day.

The monthly allowance shall be supplied by the party on whose application the decree has been executed, to the proper officer of the Court or of the jail in which the defendant is confined, by monthly payments in advance before the first day of each month.

The first payment shall be made for such portion of the current month as remains unexpired before the defendant is committed to jail.

Court may vary allowance in case of illness or for other special cause.

310. The Court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day as appears necessary.

The order fixing such allowance may from time to time be revised and altered on due cause being shown.

Subsistence-money to be added to amount of decree.

311. Sums disbursed by the holder of a decree for the subsistence of the defendant in jail shall be added to the costs of the decree, and shall be recoverable by the attachment and sale of the defendant's property under the rules contained in this Chapter for the execution of a decree for money :

Provided that the defendant shall not be detained in jail or arrested on account of any sum so disbursed.

OF DISCHARGE FROM IMPRISONMENT.

Release of defendant.

312. The defendant shall be discharged from jail by order of the Court,

(*a*) on the decree being fully satisfied, or

(*b*) at the request of the person on whose application he has been imprisoned, or

(*c*) on such person omitting to pay the allowance as hereinbefore directed, or

(*d*) by reason of his insolvency, as hereinafter provided, or

(*e*) when the term of his imprisonment as limited by section 313 is fulfilled.

A defendant discharged under this section cannot be re-arrested under the decree in execution of which he was imprisoned.

Imprisonment not to exceed two years.

313. No person shall be imprisoned in execution of the decree for a longer period than two years;

When not to exceed six months.

or for a longer period than six months if the decree be for the payment of a sum of money not exceeding five hundred rupees;

When not to exceed three months.

or for a longer period than three months if the decree be for the payment of a sum of money not exceeding fifty rupees.

OF INSOLVENT DEBTORS.

Power to apply to be declared an insolvent.

314. Any person arrested or imprisoned in execution of a decree for money may apply to be declared an insolvent.

Such application may be made to the District Court which ordered his arrest or imprisonment, as the case may be or when the District Court has not ordered his arrest or imprisonment, then to the District Court to which the Court that made the order is subordinate.

Contents of application.

315. The application shall set forth—

(*a*) the fact of his arrest or imprisonment;

(*b*) the amount, kind and particulars of his property;

(*c*) the place or places in which such property is to be found;

(*d*) his willingness to place it at the disposal of the Court;

(*e*) the amount, nature and particulars of his debts; and

(*f*) the names and residences of his creditor so far as they are known or can be ascertained by him.

Subscription and verification of application.

316. The application shall be subscribed and verified by the applicant in manner hereinbefore prescribed for subscribing and verifying plaints.

Service on decree-holder of copy of application and notice.

317. The Court shall fix a day for hearing the application and shall cause a copy of the application, with a notice in writing of the time and place at which it will be heard, to be served on the holder of the decree or his pleader and to be published in such manner as the Court thinks fit.

Power to serve other creditors.

318. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other creditor of the applicant or on any person alleging himself to be such a creditor and applying for leave to be heard on the application.

Procedure at hearing.

319. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the applicant, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the decree-holder and the other creditors (if any) in opposition to the applicant's discharge, and may, if it thinks fit, grant time to the decree-holder and the other creditors (if any) to adduce evidence showing that the applicant is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of Receiver.

320. If the Court is satisfied—

(*a*) that the statements in the application are substantially true;

(*b*) that the applicant has not fraudulently concealed, transferred, or removed any of his property;

(*c*) that he has not, knowing himself to be insolvent, unfairly given a preference to any of his creditors by any payment or disposition of his property;

(*d*) that he has not committed any other act of bad faith;

the Court may declare him to be an insolvent, and may make an order appointing a Receiver of his property.

Effect of order appointing Receiver.

321. The order under section 320 appointing a Receiver shall operate to vest in him all the insolvent's property (except such particulars as are specified in section 215) whether set forth in his application or not.

Receiver to collect assets.

322. The Receiver so appointed shall possess himself of all such property, except as aforesaid; and on his certifying that the insol-

vent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent from arrest or imprisonment, as the case may be.

Discharge of applicant.

323. Where the applicant is under arrest, the Court may, pending the hearing—

Powers of Court as to applicant under arrest.

(*a*) order him to be immediately committed to jail; or

(*b*) leave him in the custody of the officer of Court to whom the service of the warrant was entrusted, on the applicant depositing the fees of such officer, which shall be at the same daily rate as the lowest rate charged in the same Court for serving process; or

(*c*) if the applicant furnish sufficient security for his appearance at any time when called upon, his surety undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the applicant on such security.

324. The Court shall frame a schedule of creditors and their respective debts according to the justice of the case.

Applications by creditors.

The declaration under section 320 shall be deemed to be a decree in favour of each of the said creditors for their respective debts.

Any creditor of the applicant who is not mentioned in schedule may apply to the Court for an order directing his name to be inserted therein.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

325. The Receiver shall proceed under the direction of the Court—

Duty of Receiver.

(*a*) to convert the property into money;

(*b*) to pay thereout debts, fines and penalties (if any) due by the insolvent to the Crown;

(*c*) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any preference, notwithstanding anything contained in sections 305 and 306;

(*d*) to deliver the surplus, if any, to the insolvent or his legal representative.

326. An insolvent discharged under section 322 shall not (except as provided in section 327) be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 328) his property (except as excepted in section 321) shall, by order of the Court, be liable to attachment and sale until the decrees against him held by the scheduled creditors are fully satisfied or become incapable of being executed.

Effect of Discharge.

327. The discharge of the insolvent under section 322, shall not protect him from being arrested again and imprisoned on account of any of the scheduled debts if it be shown that he had,

Defendant liable to be again arrested if proved guilty of fraudulent concealment of property, &c.

(*a*) in the application made by him, been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(*b*) fraudulently concealed, transferred or removed any property; or

(*c*) committed any other act of bad faith:

In any of such cases the Court shall, at the instance of the scheduled creditors, either retain the applicant in confinement, or commit him to jail, as the case may be:

Provided that the term of imprisonment under this section shall not exceed two years from the date of committal.

Or the Court may, if it think fit, send the applicant to the Magistrate to be dealt with according to law.

328. If the aggregate amount of the scheduled debts is one hundred rupees or a less sum, the Court may declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

When Court may declare defendant absolved from further liability.

328A. The Local Government may invest any Court other than a District Court with the powers conferred on District Courts by sections 314 to 328 (both inclusive), and the District Judge may transfer to any such Court any case instituted under section 314.

Investment of other Courts with powers of District Courts. Transfer of cases.

QUESTIONS RELATING TO THE EXECUTION OF DECREES.

329. The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely)—

Determination of questions regarding amount of mesne profits and interest and sums paid in satisfaction of decrees.

(*a*) questions regarding the amount of any mesne profits which by the terms of the decree have been directed to be adjusted in the execution of the decree;

(*b*) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit between the date of its institution and the execution of the decree;

(*c*) questions relating to sums alleged to have been paid in discharge or satisfaction of the decree;

(*d*) any other questions arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by the decree.

OF EXECUTION OF A DECREE BEYOND THE LOCAL LIMITS OF THE JURISDICTION OF THE COURT BY WHICH IT WAS MADE.

Decree of one Court may be executed within the jurisdiction of another Court.

330. A decree of any Court in British India or established by the authority of the Governor-General in Council in the territories of any Native Prince or State in India, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in the manner hereinafter provided, within the jurisdiction of any other such Court.

Application for such execution.

331. The holder of a decree may apply to the Court by which it was made to send to the Court by which he wishes it to be executed—

(*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 such Court or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(*c*) a copy of any order for execution of the decree that has been passed:

Provided that no copy of a decree made by a Court of Small Causes, or in a case cognizable by a Court of Small Causes, shall be sent under this section to a High Court. But the holder of any such decree wishing it to be executed in a Presidency Town, may send to the local Court of Small Causes the copies and certificate respectively mentioned in clauses (*a*), (*b*) and (*c*) of this section; and such Court shall thereupon execute the decree as if it had been made by itself.

Copy of and decree order for execution to be sent.

332. The Court, unless there be any sufficient reason to the contrary, shall cause such copies and certificate to be prepared: they shall be signed by the Judge or Registrar or Clerk of the Court and shall be sealed with the seal of the Court and the Court shall send them by post to the Court by which holder of the decree wishes it to be executed, if such Court be within the same district, or otherwise to the principal Civil Court of original jurisdiction in the district in which the holder of the decree wishes it to be executed.

Court receiving copies of decree, &c., to file same without proof.

333. The Court to which such copies and certificate are sent shall cause them to be filed, without any proof of the decree or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any Judge or officer, unless the Court, under any peculiar circumstances to be specified in an order, requires such proof.

Transmitted copy of decree or order to have same effect as decree of Court to which it is sent for execution.

334. The copy of the decree and of any order for execution, when filed in the Court to which such copy has been sent for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the district, be executed by such Court, or by any Court subordinate thereto to which such principal Civil Court may entrust the execution of the same.

Enforcement of execution by Court applied to.

335. When the holder of a decree sent under the foregoing provisions for execution by a Court other than the Court which made it applies for execution of the decree to the Court to which it has been so sent, such Court, or any subordinate Court to which the execution of the decree may be entrusted, shall proceed to execute the decree according to the provisions of this Chapter so far as the same are applicable, and, so far as they are not applicable, according to its own rules in the like cases:

Such Court shall not enquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was passed had no jurisdiction to pass it.

Execution by High Court of decree transmitted by other Court.

336. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Powers of Court applied to by decree-holder in executing decree.

337. The Court to which the holder of the decree so applies, shall have as large powers in executing the decree as the Court by which it was made would have had if the decree had been capable of being executed within the jurisdiction of the same Court.

338. The Court to which such application is made or referred for execution as aforesaid, shall take cognizance of and punish all wrongful acts or irregularities committed in executing such decree; and all persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had made the decree.

Wrongful acts or irregularities in executing decree to be punished by Court applied to.

339. The Court to which such application is made or referred as aforesaid, may, upon sufficient cause being shown, stay the execution of the decree for a reasonable time, to enable the defendant to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the 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;

Court applied to may in certain cases stay execution.

and in case the property or person of the defendant has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of such application.

340. Before passing an order to stay execution or for the restitution of property or the discharge of the defendant under section 339, the Court may require such security from, or impose such conditions upon, the defendant as it thinks fit.

Before making any order under section 339, Court may require security from, or impose conditions upon, defendant.

341. Any such order of the Court in which the decree was passed or of such Court of appeal as aforesaid, shall be binding upon the Court to which the application for execution was made, and shall be a sufficient indemnity to all persons acting in execution of any process issued by such last-mentioned Court.

Order of Court passing decree or of Appellate Court to be binding upon Court applied to.

342. No discharge of a defendant under section 339, shall prevent him from being re-taken in execution of the decree.

Liability of defendant discharged to be re-taken.

343. The orders of a Court for executing the decree of another Court shall be subject to the same rules in respect of appeal, as if the decree had been originally passed by the Court making such orders.

Appeal from orders for execution of decrees of other Courts.

344. The rules contained in this chapter shall be applicable to the execution of any judicial process for the sale of property or payment of money, which may be ordered by a Civil Court in any civil proceeding.

Rules applicable to all civil process for sale or payment.

Of Claims to Attached Property by Strangers to the Suit.

345. If any claim be preferred to, or any objection be made to the sale of, any property which shall have been attached in execution of a decree, as not liable to be sold in execution of the decree against the defendant, the Court shall, subject to the proviso contained in section 351, 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 and objections to sale of attached property.

346. The claimant or objector must adduce evidence to show that at the date of the attachment he was entitled to, or possessed of, the property attached.

Evidence to be adduced by claimant.

347. If the property is immovable, and if 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 party against whom execution is sought 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 party himself 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, the Court shall pass an order for releasing the property from attachment.

Release of property from attachment.

348. If in like manner the Court is satisfied that the property was in possession of such party subject to a mortgage or lien in favour of some other person, the Court shall continue the attachment subject to the claims of such other person.

Continuance of attachment subject to claim of incumbrancer.

349. If the property attached be immovable, and the Court is satisfied that the property was, at the time it was attached, in possession of the party against whom execution is sought 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 and may order the sale to proceed at such time as it thinks fit.

When Court to disallow claim to release of property attached.

350. The party against whom an order is passed under section 347 may bring a suit to establish his right to attach the property, and an obtaining a decree in such suit, the said order shall be set aside.

Person against whom order is passed under section 347 or 349 may sue within one year to establish his right.

The party against whom an order is passed under section 349, may, within one year from the date of the order, bring a suit for a declaration that at the date of the attachment he was entitled to, or possessed of, the property attached.

Claims and objections to be made without delay.

351. A claim to attached property, or an objection to the sale of such property, shall be made without delay to the Court which ordered the attachment; and if the property to which the claim or objection applies has been advertised for sale, the sale may, if the Court thinks fit, be postponed pending the investigation into the claim or objection:

Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed with a view to obstruct the ends of justice.

If claim or objection be disallowed, claimant or objector may sue.

352. If, on the ground of delay in making it, the claim or objection be disallowed, or the Court refuse to investigate it, the proceedings on such claim or objection shall not preclude a suit by the claimant or objector.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XIX.

OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

No abatement by party's death, if cause of action survive.

353. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives.

Illustrations.

(*a*). A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the cause of action survives to C, and the suit does not abate.

(*b*). In the same case, all the parties die before decree. The cause of action survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

Proceeding in case of death of one of several plaintiffs or defendants, if cause or action survive.

354. If there be more plaintiffs or defendants than one, and any of them dies, and if the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause 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.

Proceeding in case of death of one of several plaintiffs, where cause of action survives to the survivors and representative of deceased.

355. If there be more plaintiffs than one, and any of them dies, and if the cause of action does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name in the register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

Proceeding where no application made by representative of deceased plaintiff.

356. If no application be made to the Court within a reasonable time by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative of the deceased plaintiff shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Proceeding in case of death of sole, or sole surviving, plaintiff.

357. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff in the register of the suit, and the suit shall thereupon proceed.

Abatement where no application by representative of deceased plaintiff.

358. If no such application be made to the Court within a reasonable time, by any person claiming to be the legal representative of any such deceased plaintiff as aforesaid, the Court may pass an order that the suit shall abate, and award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of such deceased plaintiff as aforesaid;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of such deceased plaintiff as aforesaid, and for proceeding with the suit in order to a final determination of the matter in dispute.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

Procedure in case of dispute as to representative of deceased plaintiff.

359. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

360. If there be more defendants than one and any of them die, and the cause of action does not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

Procedure in case of death of one of several defendants, or of sole or sole surviving defendant.

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative in the register of the suit in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:—

Provided that the person so made defendant shall be at liberty to object that he is not the legal representative of the deceased defendant, or to make any defence appropriate to his character as such representative.

361. 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 thereupon be executed against the wife alone.

Suit not abated by marriage of female party.

If the case is one in which 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.

362. The bankruptcy or insolvency of a plaintiff in any suit which his assignee might maintain for the benefit of his creditors shall not bar the suit, unless such assignee declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

When plaintiff's bankruptcy or insolvency bars suit.

If the assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may award to the defendant the costs which he has incurred in defending the suit, to be recovered from the plaintiff's estate.

363. The abatement or dismissal of a suit under this chapter shall have the same effect on the rights of the parties as if the suit had been dismissed on the merits.

Effect of abatement on parties' rights.

CHAPTER XX.

Of the Withdrawal and Adjustment of Suits.

364. If at any time before judgment, the Court is satisfied on the application of the plaintiff (*a*) that the suit must fail by reason of some formal defect, and (*b*) that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

Court may allow plaintiff to withdraw suit with liberty to bring fresh suit.

If the plaintiff withdraw from the suit without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter.

Nothing in this section shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

365. If any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitations in the same manner as if the first suit had not been brought.

Limitation-law not affected by first suit.

366. If a suit be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith.

Compromise of suit.

CHAPTER XXI.

Of Payment into Court.

367. The defendant in any suit involving a claim to money, 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 considered by him to be in full satisfaction of claim with costs up to date.

Notice of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall be paid to the plaintiff on his application.

Notice of deposit.

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 be in full of the claim or fall short thereof.

Interest on sum deposited not allowed to plaintiff after receipt of notice.

368. If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; but if the Court

Procedure where plaintiff accepts the deposit as satisfaction in part.

decides that the payment by the defendant has been a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit.

Procedure where he accepts the deposit as satisfaction in full.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall file in Court a statement to that effect, and the Court shall pass 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.

(*d*). A pays Rs. 100 into Court under the circumstances mentioned in illustration (*c*). B accepts it in part discharge of his claim and continues the suit for the remainder. B fails. The Court should order him to pay all the costs of the suit.

The above illustrations assume that, save what is therein mentioned, there is nothing in the conduct of the parties which should influence the Court in awarding costs.

CHAPTER XXII.

Of Requiring Security for Costs.

When security for costs is to be furnished by plaintiff at the time of presenting the plaint.

369. When the plaintiff ordinarily resides out of British India, and does not possess any sufficient immovable property within British India independent of the property in suit, he shall, on presenting the plaint or within such time as the Court may fix, furnish security for the payment of the costs that may be incurred by the defendant.

When security for costs may be required from the plaintiff at any stage of suit.

370. If at any subsequent stage of a suit it appears to the Court that a sole plaintiff is, or that all the plaintiffs (when there are more plaintiffs than one) are residing out of British India, and such plaintiff or plaintiffs does not or do not possess any sufficient immovable property within British India independent of the property in suit, the Court may order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by the defendant.

Procedure where requisition is not complied with.

In the event of such security not being furnished within the time so fixed, the Court shall pass a decree against the plaintiff or plaintiffs by default, unless he or they be permitted to withdraw from the suit under the provisions of section 364.

Residence out of British India.

371. A person is considered to be resident out of British India, within the meaning of the two last preceding sections, who 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.

CHAPTER XXIII.

Of setting aside Decrees by Default and Ex-parte.

Setting aside decree *ex-parte* against defendant.

372. In any case in which a decree is passed *ex parte* against a defendant under section 92, he may within a reasonable time, not exceeding thirty days after any process for enforcing the decree has been executed, apply to the Court by which the decree was made for an order to set it aside;

and if it be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree 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 by default against plaintiff.

373. In any case in which a decree is passed against a plaintiff by default under section 96, he may within thirty days from the date of the decree apply for an order to set it aside; and if it be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No decree to be set aside, without notice to opposite party.

374. No decree shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.

Order for setting aside decree to be final.

375. In every case in which the Court passes an order under section 372, or section 373 for setting aside a decree, the order shall be final.

CHAPTER XXIV.

Of Commissions.

A.—Commissions to examine Witnesses.

Cases in which Court may issue commission to examine witness.

376. The Court may order a commission to issue for the examination on interrogatories or otherwise of the following persons:—

(*a*) persons who, under section 162 or section 164, are not bound to attend the Court;

(*b*) persons who are from sickness or infirmity unable to attend;

(*c*) persons exempted by reason of rank or sex from appearing in Court.

Order for commission may be made either on application of parties or by Court of its own accord.

377. Such order may be made by the Court either of its own motion or on the application of any party to the suit or of the witness to be examined.

Directions for examination.

378. The Court may, by the same or any subsequent order, give such directions as to taking the examination of an absent witness as it thinks fit.

When witness resides within Court's jurisdiction.

379. If a Commission be issued for the examination of a person who resides within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court or to any Court subordinate to such Court, or to any other person whom the Court issuing the Commission thinks proper to appoint to execute the same.

When witness resides beyond Court's jurisdiction, but in British India.

380. If the person resides at some place in British India beyond the jurisdiction of the Court issuing the Commission, the Commission shall ordinarily be issued to any Court, not being a High Court, within whose jurisdiction he resides, and which can most conveniently execute the same:

Provided that, under special circumstances, the Commission may be issued to any person whom the Court issuing it thinks fit to appoint.

When witness is within local limits of ordinary original civil jurisdiction of a High Court.

381. If the person resides beyond the jurisdiction of the Court issuing the Commission and within the local limits of the ordinary original civil jurisdiction of any High Court, the Commission shall be issued to the Court of Small Causes within whose jurisdiction the witness resides, or to any Court, other than a High Court, which now exists or may hereafter be established with jurisdiction within the same local limits:

Provided that, under special circumstances, the Commission may be directed to any person whom the Court issuing the Commission thinks fit to appoint.

When witness is not within British India.

382. In the case of a person residing at any place not within British India, the Court, if satisfied that the evidence of such person is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission for his examination:

Provided that, if the suit be pending in any Court subordinate to the District Court, such subordinate Court shall not issue the Commission, but the District Court may issue the Commission on the application of the subordinate Court.

Commission when executed to be returned to Court issuing it with depositions of witnesses.

383. After the Commission has been duly executed, it shall be returned together with the evidence, taken under it, to the Court out of which it 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 form part of the record of the suit.

When depositions may be read in evidence.

384. 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

(*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 apearance in Court, or

(*b*) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, 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.

Evidence of prisoners.

385. If the person whose evidence is required is in jail, his evidence shall be taken in the mode prescribed by the Prisoners' Testimony Act, 1869, or by any other law for the time being specially applicable to the taking of evidence in the case of prisoners.

B.—Commission for Local Investigations.

Commission to make local investigations.

386. 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 nett profits, the Court may issue a Commission to an officer of the Court appointed to execute such Commissions, or, if there be no such officer, to any suitable person, directing him to make such investigation and to report thereon to the Court.

Appointment of Government officer as Commissioner.

387. If in any case it appears desirable to employ an officer of Government other than the officer of the Court appointed to execute such Commissions, the Court may, with the consent of the immediate superior of the officer whom the Court wishes to employ, appoint him to make such investigation and report.

388. The Commissioner, unless otherwise directed by the order of appointment, may 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.

Commissioner may examine parties and witnesses and call for papers.

The Commissioner may also call for and examine documents and other papers relevant to the subject of enquiry.

The Commissioner, after such local inspection as he deems necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the evidence of witnesses in the presence of the Judge, the evidence taken by him, shall return such evidence, together with his report in writing, subscribed with his name, to the Court.

389. 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 any of the parties to the suit with the permission of the Court, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he may have conducted the investigation.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

C.—Commission to investigate Accounts.

390. In any suit in which an investigation or adjustment of accounts is necessary, the Court may appoint such officer or other person as aforesaid to be a Commissioner for the purpose of making such investigation or adjustment.

Commissioner to investigate and adjust accounts.

391. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

Court to give Commissioner necessary instructions.

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation.

392. The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further enquiry as is requisite, and shall make such decree or order as it thinks fit.

Proceedings of Commissioner may be received in evidence.

Power to make further enquiry if dissatisfied.

D.—General Provisions.

393. Whenever a Commission is issued under any of the provisions of this Chapter, the Court, before issuing the Commission, may order such sum (if any) as it thinks reasonable for the expenses of the Commission to be 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.

394. 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 the foregoing provisions relating to Commissions to examine persons, whether parties to the suit or not, or to make local enquiries, or to investigate or adjust accounts.

Attendance, examination and punishment of witnesses summoned by Commission.

The examination of witnesses before a Commission shall be conducted in the same manner as the examination of witnesses is conducted in the Court from which the Commission issued.

The Commissioner shall take down all questions and answers, and make a note of the objections, if any, to the admissibility of evidence.

Any penalty to which a witness may be liable under this section shall, on the application of the Commissioner, be imposed by the Court from which the Commission issued.

The Commissioner shall have the same legal powers, as regards the summoning, examination and remuneration of witnesses as the Court issuing the Commission.

395. Whenever a Commission is issued under the provisions of this chapter, the Court shall direct that the parties to the suit shall appear before the Commission in person or by their agents or pleaders.

Procedure *ex parte* where parties do not appear.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXV.

Suits by Paupers.

396. A suit may be brought *in formâ pauperis* in the Court having jurisdiction over the claim, subject to the following rules.

Suits may be brought *in formâ pauperis*.

397. No suit shall be brought *in formâ pauperis* to recover compensation for loss of caste, slander, abusive language or assault.

What suits excepted.

398. The application for permission to institute a suit *in formâ pauperis* shall be by petition in writing.

Application to be by Petition on stamp paper.

399. The petition shall contain the particulars required by section 49 in regard to plaints in suits, and shall have annexed to it a schedule of any movable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.

Contents of petition.

400. Notwithstanding anything contained in section 32, the petition shall be presented to the Court by the petitioner in person.

Presentation of petition.

But if he satisfy the Court that he is prevented by sickness from attending the Court in person, or if the petitioner be a female who, according to the custom of the country, ought not to be compelled to appear in public, the petition may be presented by a duly authorized agent who may be able to answer all material questions relating to the application, and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Certain petitions may be presented by agent.

401. If the petition be not framed or presented in the manner laid down in sections 399 and 400, the Court shall reject it.

Rejection of petition.

402. If the petition be in form and duly presented, the presiding officer of the Court shall himself proceed to examine the petitioner, or his agent when the petitioner is allowed to appear by agent, regarding the merits of the claim and the property of the petitioner.

Examination of petitioner.

When the petition is presented by an agent, the Court may, if it thinks proper, order that the petitioner be examined by a Commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

If presented by agent, Court may order petitioner to be examined by Commission.

403. If it appear to the Court upon such examination

Rejection of application.

(*a*) that the defendant, or the subject-matter of the suit, is not within the local limits of the jurisdiction of the Court, or

(*b*) that the right to sue is barred by lapse of time, or

(*c*) that the allegations of the petitioner do not show a right to sue, or,

(*d*) that he has failed to show that he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint, or,

(*e*) that he has recently disposed of any property fraudulently or with a view to obtain the benefit of this chapter,

the Court shall refuse to allow him to sue as a pauper.

404. If upon such examination the Court sees no reason to refuse the application on any of the grounds stated in the last preceding section, it shall fix a day, of which at least ten days' previous notice shall be given to the opposite party, for receiving such evidence as the petitioner may adduce in proof of his being a pauper, and for hearing any evidence which the opposite party may bring forward in disproof of his pauperism.

Notice of day for receiving evidence of petitioner's pauperism.

405. 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 make a memorandum of the substance of their evidence.

Procedure at hearing.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the petition and of the evidence (if any) taken by the Court as herein provided, the petitioner is or is not subject to any of the prohibitions specified in section 403.

The Court shall then either allow or refuse to allow the petitioner to sue as a pauper.

406. Either party may, on application to the Court made in sufficient time before the day fixed for the hearing of the case obtain a summons to any person to attend either to give evidence or to produce a document.

Summons to witness.

407. Previously to passing a final order in the case, the Court may, if it thinks fit, cause a local investigation to be made in the manner laid down in sections 386 to 389 (both inclusive) regarding the property of the petitioner or regarding the amount or value of any property claimed.

Court may institute local investigation.

408. If the application of the petitioner be 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 under Chapter V. except that the plaintiff shall not be liable to any fee chargeable under the Court Fees Act, 1870, in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Procedure if application admitted.

Nothing in this section exempts the petitioner from—

(*a*) payment of the expenses of service of process,

(*b*) payment of the travelling and other expenses of witnesses,

(*c*) payment of the duty and penalty (if any) payable under the General Stamp Act on unstamped or insufficiently stamped instruments produced in Court by or on behalf of the petitioner, or

(*d*) giving security for costs, if he resides out of British India.

409. If the plaintiff succeed in the suit, the Court may award to him such costs as it thinks fit, and shall calculate the amount of fees chargeable under the Court Fees Act, 1870, which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

Costs when pauper succeeds.

Recovery of *dives* stamp duty.

The costs of an application for permission to sue as a pauper and of an enquiry into pauperism are costs in the suit.

If the plaintiff fails in the suit, the Court may order him to pay costs to the defendant; and if it find that the suit was frivolous or vexatious it may also punish him with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

Procedure when pauper fails.

410. Refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same right to sue; but the plaintiff shall be at liberty to institute a suit in the ordinary manner in respect of such right.

Refusal to allow petitioner to sue as pauper to bar subsequent application of like nature.

411. The Court may, on motion by the defendant, of which he shall have given one week's notice in writing to the plaintiff, order the plaintiff to be dispaupered—

Dispaupering.

(*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 which would be held invalid on the ground of its breeding litigation or being otherwise against public policy.

412. The provisions of Chapters XIV. and XV. relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to witnesses and other persons required to give evidence or to produce documents under the provisions of this Chapter.

Attendance, examination and punishment of witnesses.

CHAPTER XXVI.

Suits by or against Government or Government Servants.

413. Suits by or against the Government shall be brought by or against (as the case may be) the Secretary of State for India in Council.

The Secretary of State in Council.

414. Persons being *ex officio* or otherwise authorized to act for Government 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 Government.

Persons authorized to act for Government.

415. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council," and the plaint may be subscribed and verified by the Government Pleader of the Court in which the suit is brought, or, where there is no such Pleader, by the Pleader by whom the plaint is filed.

In suits by Secretary of State in Council.

416. The person appointed to act as pleader on the part of Government in any Court, shall be accounted the agent of the Government for the purpose of receiving processes against the Government or the Secretary of State for India, issuing out of the Court in which such person may be the pleader of Government.

Agent of Government to receive process.

417. The person appointed to act as pleader on the part of Government in any District Court shall, for the purpose of the last preceding section, be considered the pleader of Government in any Court in such district in which no person has been specially appointed pleader on the part of Government in such Court.

Government pleader where none specially appointed.

418. Processes issued by a Court to the Government Pleader of another Court may be forwarded to him by post.

Processes issued to Government pleader of another Court.

419. If the suit be against the Secretary of State for India the summons shall be served on the Government Pleader of the Court in which the suit is instituted or on any other person appointed to receive process on behalf of the Government.

Service on Government Pleader.

420. The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Secretary of State for India or the Government, and may extend the time at its discretion on application being made for such extension.

Appearance and answer by Secretary of State.

The Court may also in any case in which the Government Pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

421. If the defendant be in the service of Government, the Court may send a copy of the summons to the head officer of the office in which the defendant is employed, for the purpose of being served on him, if it shall appear to the Court that the summons may be most conveniently so served.

Service on Government servants.

422. If the suit be against an officer of Government for an act which the plaintiff alleges to have been done by such officer in his official capacity, the summons shall be served upon such officer in the manner provided in section 421.

Service of summons in suits against Government officers for alleged official acts.

423. If the officer on receiving the summons considers it proper to make a reference to the Government before answering to 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 officer to make reference to Government.

and the Court upon such application may extend the time for so long as appears to be requisite.

424. If the Government undertake the defence of a suit of the nature referred to in Section 422, the Government Pleader, upon being furnished with authority to appear and answer to 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.

Application where Government undertakes defence.

425. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest before judgment.

Procedure where no such application made.

Defendant not liable to arrest before judgment.

426. If in a suit against an officer of the Government the Court requires the personal appearance of the defendant, and the defendant satisfies the Court that he cannot absent himself from his duty without detriment to the public service, the Court shall exempt him from appearing in person, but he shall be liable to be examined in any way in which an absent witness may be examined.

Exemption of Government officers from personal appearance.

427. When the decree is against Government or against an officer acting on behalf of Government, and the officer against whom execution is applied for neglects or refuses to satisfy the decree, the Court shall report the case for the orders of the Local Government.

Procedure where decree is against Government or officer on behalf of Government.

Execution shall not issue on any decree mentioned in this section unless it remains unsatisfied for the period of three months computed from the date on which the report of the case reaches the Local Government.

CHAPTER XXVII.

Suits by or against Native and Foreign Rulers.

428. Persons specially appointed by an order of the Governor General in Council or the Local Government at the request of any Sovereign Prince or independent Chief, whether residing within or without British India, to prosecute or defend a 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.

Persons specially appointed by Government to prosecute or defend a suit for a Prince or Chief.

CHAPTER XXVIII.

Suits by and against Corporations and Companies.

429. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Subscription and verification of plaint.

430. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee,

Service on a Corporation or Company.

the summons may be served by leaving the same at the registered office (if any) of the Corporation or Company, or sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or by giving it to any director, secretary, or other principal officer of the Corporation or Company,

and the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

CHAPTER XXIX.

Suits by and against Trustees, Executors, and Administrators.

431. In all suits concerning property vested in a trustee, executor or administrator, the trustee, executor or administrator shall represent the persons beneficially interested in such property; and it shall not ordinarily be necessary to make such persons parties to the suit. But the Court may, if it think fit, order them or any of them to be made such parties.

Representation of beneficiaries in suits concerning property vested in trustees, &c.

432. Where there are several executors or administrators, they must all be made parties to a suit against one or more of them:

Joinder of executors and administrators.

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

433. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

Husband of married executrix not to join.

CHAPTER XXX.

Suits by and against Minors and Persons of unsound mind.

434. Every suit on behalf of a minor, shall be instituted in the name of an adult person, who in such suit shall be called the next friend of the minor and may be ordered to pay any costs in the suit as if he were the plaintiff.

Minor must sue by next friend.

Costs.

435. If a plaint be filed on behalf of a minor, without a next friend, the defendant may apply by summons to have the plaint

Plaint filed without next friend, to be taken off the file.

taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

Costs.

436. Where the defendant to a suit, or respondent to any application, is a minor, the Court shall appoint a proper person to be guardian *ad litem* for such minor to put in the defence for such minor, and generally to act on such minor's behalf in the conduct and management of the case.

Guardian *ad litem* to be appointed by the Court.

437. Every application to the Court on behalf of a minor shall be made by his next friend, or his guardian *ad litem*.

Applications to be made by next friend, or guardian *ad litem*.

438. 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 *ad litem*, as the case may be, may be discharged, with costs to be paid by the pleader of the pleader at whose instance such order was obtained, if such pleader knew, or might reasonably have known, the fact of such minority.

Order obtained without next friend or guardian may be discharged.

Costs.

439. Any person, being *sui juris*, and not being a married woman, may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant or respondent.

Who may be next friend.

440. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant or respondent whose interest is adverse to that of such minor, as to make it unlikely that the interest of such minor will be properly protected by him, or if he does not do his duty, or, pending the suit or application, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of such minor or by a defendant or respondent for his removal, and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Removal of next friend.

441. Unless otherwise ordered by the Court or a Judge, a next friend shall not retire at his own request without first procuring a fit and proper person to be put in his place, and giving security for the costs already incurred.

Retirement of next friend.

442. The application for the appointment of a new next friend shall be by summons, and shall be supported by affidavit, showing the fitness of the person proposed, and also, that he has no interest adverse to the minor.

Application for appointment of new next friend.

443. On the death or removal, as aforesaid, of a next friend, further proceedings shall be stayed until the appointment of a next friend in his place.

Stay of proceedings on death or removal of next friend.

444. Whoever seeks to be appointed a new next friend may apply through the minor's pleader by summons, for the appointment of a new next by friend, whose fitness must be verified by affidavit.

Who may apply for appointment of a new next friend.

If the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person may apply, by summons, to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

445. On the appointment of a new next friend his name as such shall thenceforth be inserted in the proceedings.

Name of new next friend to be inserted in proceedings.

446. Before the name of any person can be used as the next friend of a minor, he must sign a written authority to the pleader for that purpose, which authority must be filed in Court.

Written authority to act for next friend to be filed.

447. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the suit on application.

Course to be followed by minor plaintiff or applicant on coming of age.

If he elects to proceed with it, he shall obtain an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus :— "*A. B.*, late a minor by *C. D.*, his next friend, but now of full age."

If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, obtain an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent or which may have been paid by his next friend.

When minor sole plaintiff, or sole applicant.

Costs.

In either case the application may be made by petition *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

448. A minor co-plaintiff or co-applicant, on coming of age, and desiring to repudiate the suit or application, must apply to have his name struck out as co-plaintiff or co-applicant or for permission to withdraw from the application.

When minor co-plaintiff, or co-applicant.

The application shall be by summons to the next friend, as well as to the defendant or respondent; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit or matter, shall be paid by such persons as the Court directs.

Costs.

When suit or proceeding unreasonable or improper.

449. If any minor on attaining majority can prove to the satisfaction of the Court that a suit or proceeding instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff or sole applicant, apply to have the suit or proceeding dismissed, or if a co-plaintiff or co-applicant, apply to have his name struck out as such co-plaintiff or co-applicant.

Costs.

The application shall be by summons to 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 of the application, and all or any of the costs of all parties of any proceeding theretofore had in the suit or matter.

Minor cannot appear by another pleader without order to change pleader.

450. A minor, on attaining majority, will not be allowed to appear by another pleader, unless he has obtained an order to change the pleader.

Petition for appointment of guardian *ad litem*.

451. An order for the appointment of a guardian *ad litem* may be obtained upon petition in the name of the minor. The petition must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit or application, adverse to that of the minor, and that he is a fit and proper person to be appointed.

Who may be guardian *ad litem*.

452. A co-defendant or co-respondent, if *sui juris*, may be appointed guardian *ad litem*, if he has no adverse interest ; but neither a plaintiff, nor a party applicant, nor a married woman, can be appointed.

Assignment of guardian at instance of plaintiff or applicant.

453. If no application for the appointment of a guardian *ad litem* be made on behalf of a defendant or respondent to any application who is a minor, the plaintiff or applicant may, if default be made by the defendant or respondent in appearing to the suit, or answering the application, apply that a guardian *ad litem* may be appointed, and the Judge, on being satisfied that such defendant or respondent is a minor so that he is unable of himself to protect his interests in the suit or application, may assign a guardian to such defendant or respondent, by whom he may appear to and defend such suit, or answer such application.

Appearance by minor.

Guardian not to be assigned at instance of plaintiff or applicant without notice.

454. No such order shall be made, unless it appears to the Judge, on the hearing of the application for the appointment of a guardian *ad litem*,

(*a*) that a copy of the summons was duly served, and

(*b*) that notice of such application was, after the time within which the defendant or respondent was required to appear or answer, and at least four clear days before the hearing of such application, served upon the person with whom or under whose care such defendant or respondent was at the time of serving the summons ; and

(*c*) in case of such defendant or respondent being a minor not residing with, or being under the care of, his father or guardian, that notice of such application was also served upon the father or guardian, if any, of such minor, unless the Court, at the time of hearing the application, thinks fit to dispense with such last-mentioned service.

On death of guardian, *pendente lite*, new guardian to be appointed.

455. If the guardian *ad litem* dies pending a suit, or pending an application made against a minor not a party to a suit, a new guardian must be appointed in his place, in the same manner as the original guardian, and upon similar evidence.

Guardian neglecting his duty may be removed.

456. If the guardian *ad litem* of a minor defendant or respondent does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Costs.

When decree to be enforced against heir or representative.

457. When the enforcement of a decree is applied for against the heir or representative, being a minor of a deceased party, a guardian *ad litem* of such minor must be appointed, and a notice, similar to that issued under section 226, must be served on such guardian.

Day to show cause not to be given.

458. Where any decree is made against a minor defendant, no day to show cause shall be given, unless the Court otherwise orders.

Where decree or order for minor, payment to be made to Receiver.

459. Where a decree or order, not solely for costs of suit, has been made by the Court, under which any sum of money, or any other thing, is payable to or receivable by a minor, every such sum of money, or thing, shall, unless the Court otherwise orders, be paid or delivered to the Receiver or other officer of the Court, whose duty it is to receive or realize, or obtain possession of, and hold the same on behalf of such minor.

Before decree, next friend or guardian *ad litem* not to receive money without leave of Court and giving security.

460. After the appointment of next friend or guardian *ad litem*, no sum of money, or other thing, shall be received or taken by him at any time on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to the satisfaction of the Court, that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

461. No such next friend or guardian *ad litem* shall enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian without the leave of the Court, to be applied for on petition.

Next friend or guardian *ad litem* not to compromise without leave of Court.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Compromise without leave voidable.

462. The provisions contained in sections 434 to 461 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind not found so by inquisition,

Application of sections 434 to 461 to persons of unsound mind not found so by inquisition.

and on the application for the appointment of a guardian *ad litem*, it must also be proved by the affidavit of a medical man, or other person qualified to give the evidence, that the person who is said to be of unsound mind is actually in that condition, and incapable of taking care of his own affairs, or of understanding the purport or nature of the suit or application, or of defending or answering the same.

CHAPTER XXXI.

Suits by infirm Persons and Women.

463. Persons who by reason of bodily infirmity are unable without risk or serious inconvenience to attend the Court in person, and women exempt under section 692 from appearing in Court, may give special powers-of-attorney to other persons, authorizing them to appear, sue or defend in a particular suit, and persons so authorized shall be deemed to be, for the purposes of this Code, recognised agents of their principals.

Persons specially authorized by infirm persons to appear, sue or defend.

CHAPTER XXXII.

Suits by and against Military Men.

464. When any officer or soldier in the military service of the Government 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.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of his commanding officer or of the next subordinate officer, if the party be himself the commanding officer. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier 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 chapter the expression 'commanding officer' means the officer in actual command for the time being of any Regiment, Corps, Detachment or Depôt to which the officer or soldier belongs.

465. Any person authorized by an officer or soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Person so authorized may act personally or appoint pleaders.

466. Processes served upon any person authorized by an officer or soldier, as in section 464, or upon any pleader appointed as aforesaid by such person to act for or on behalf of such officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

Service on person so authorized, or on his pleader, to be good service.

467. If the defendant be an officer or soldier in the military service of the Government, the Court shall send a copy of the summons to the commanding officer of such officer or soldier for the purpose of being served on him.

Service on officers and soldiers.

If the defendant be himself the commanding officer, such copy shall be sent for the same purpose to the next subordinate officer.

The officer to whom the summons is transmitted, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the summons cannot be served upon the person to whom it is addressed, it shall be returned to the Court by which it was transmitted, with information of the cause which has prevented the service.

In such case the Court shall take such other means of serving the summons as it thinks fit.

468. If, in the execution, of a decree, process is to be executed within the limits of a Cantonment, Garrison, Military Station or Military Bázár, the officer entrusted with the execution of such process shall carry the same to the Commanding Officer.

Service of process in Cantonments, &c.

The Commanding Officer, upon such process being produced to him, shall back the same with his signature, and, in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of his command, and delivered, according to the exigency of the warrant, to the officer charged with the execution thereof.

CHAPTER XXXIII.

Interpleader.

469. When two or more persons claim adversely to one another the same payment or property from another person whose only interest therein is that of a mere stakeholder and who only seeks to render it to the right owner, such stakeholder

When interpleader suit may be instituted.

may institute a suit of interpleader against all the claimants for the purpose of having it decided to whom the thing claimed belongs, and of obtaining indemnity for himself.

Illustration.

A obtains a decree against B. C, an officer of the Court, takes goods which he has reason to suppose are B's, in satisfaction of the decree. D alleges that the goods are his and threatens to sue C for their recovery. A on his part contends that the goods ought to be sold to satisfy his decree. C may institute an interpleader suit against A and D.

Explanation.—If any suit is pending in which the rights of all parties can properly be decided, there is no occasion for an interpleader suit.

Plaint in such suit.

470. In every such suit the plaint must, in addition to the other statements necessary for plaints, state—

(*a*) That the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(*b*) The claims made by the defendants severally;

(*c*) That there is no collusion between the plaintiff and any of the defendants.

Payment of things claimed into Court.

471. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Procedure at first hearing.

472. At the first hearing the Court may

(*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 if it thinks that justice or convenience so require,

(*b*) retain all parties until the final disposal of the suit:

and, if it finds that the admissions of the parties or other evidence enable it,

(*c*) adjudicate the title to the thing claimed:

or else it may

(*d*) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court.

When agents and tenants may sue.

473. Nothing in this chapter shall be taken 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.

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 maintain an interpleader suit against A and C.

(*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 maintain an interpleader suit against A and C.

Charge of plaintiff's costs.

474. When the suit is properly instituted, the Court shall provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Procedure where a defendant is suing the stakeholder.

475. If any of the defendants in an interpleader suit is actually suing the stakeholder being the plaintiff in that suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed that a decree has been made in the interpleader suit in favour of the stakeholder, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in the suit so stayed, but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit.

Costs.

PART IV.

OF PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST BEFORE JUDGMENT.

When plaintiff may apply that security be taken.

476. If at any stage of a suit the plaintiff satisfies the Court that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

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 plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security.

477. If the Court, after examining the applicant, and making such further investigation as it may consider necessary, is satisfied that the defendant, with any such intent as aforesaid,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

(*d*) is about to leave British India under the circumstances last aforesaid,

the Court may issue an order for bringing the defendant before the Court to show cause why he should not give security for his appearance.

478. If the defendant fail 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 give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

If defendant fail to show cause, Court may order him to make deposit or give security.

The surety 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.

479. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

Procedure in case of application by surety to be discharged.

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.

On the appearance of the defendant pursuant to 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.

480. If the defendant fail to comply with an order under either of the two last preceding sections, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree.

Procedure where defendant fails to give security or find fresh security.

481. If it appear to the Court that the arrest of the defendant was applied for on insufficient grounds,

Compensation where defendant arrested or suit instituted on insufficient grounds.

or if, after such arrest, the suit of the plaintiff is dismissed, or judgment is given against him by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for any injury or loss which he has sustained by reason of such arrest:

Provided that the Court shall not award a larger amount of compensation under this section than it is competent to such Court to decree in a suit for compensation.

Proviso.

An award under this section shall bar any suit for compensation in respect of such arrest.

CHAPTER XXXV.

Of Attachment before Judgment.

482. If at any stage of any suit the plaintiff satisfies the Court that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

Application before judgment for security from defendant to fulfil decree, and in default, for an attachment of his property

(*a*) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(*b*) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to fulfil any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any such property shall be attached until the further order of the Court.

483. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof; and the plaintiff shall, at the time of making the application, declare that the defendant is about to dispose of or remove his property with such intent as aforesaid.

Contents of application.

The declaration shall be in writing, and shall be verified in the manner hereinbefore provided for the verification of plaints:

Provided that the Court may dispense with the specification and valuation required by this section, if satisfied of the plaintiff's inability to furnish the same.

484. If the Court, after examining the applicant, and making any further investigation which it may consider necessary, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, the Court may require him, within a time to be fixed by the Court, 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 fulfil the decree, or to appear and show cause why he should not furnish security.

Court may call on defendant to furnish security or show cause.

The Court may also in the order direct the provisional attachment of the whole or any portion of the property specified in the application.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to fulfil any decree which may be passed in the suit, shall be attached.

Attachment if cause not shown or security not furnished.

486. If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been ordered to be attached the Court shall order the attachment to be withdrawn.

Withdrawal of attachment.

487. The attachment shall be made, according to the nature of the property to be attached, in the manner hereinbefore provided for the attachment of property in execution of a decree for money.

Mode of making attachment.

488. If any claim be preferred to the property attached before judgment, such claims shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Investigation of claims to property attached before judgment.

489. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment.

Removal of attachment when security furnished.

490. If it appear to the Court that the attachment was obtained on insufficient ground, or

if, after the attachment, the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise,

and it appears to the Court that there was no probable ground for instituting the suit, the Court which disposes of the case may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment:

Compensation for obtaining attachment or instituting suit on insufficient grounds.

Provided that the Court shall not award a larger amount under this section than it is competent to such Court to decree in a suit for compensation.

Proviso.

An award under this section shall bar any suit for compensation in respect of such attachment.

491. Attachment before judgment shall not affect the rights 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.

Attachment not to affect rights of strangers, or bar the decree-holder from applying for sale.

492. If it appear to the Court by which the property has been ordered to be attached before judgment, that there is reasonable ground for supposing that the decree in satisfaction of which the sale of the property is applied for under the provisions of section 491, was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution if the decree be a decree of that Court, or if it be a decree of another Court, may stay the proceedings for a reasonable time to enable the person on whose application the property was ordered to be attached to adopt proceedings to set aside the decree.

Stay of sale of property already under attachment, when execution of decree fraudulently obtained is applied for.

493. When land paying revenue to Government, or a tenure liable to summary sale, forms the subject 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 a sale is in consequence ordered to take place, the party to the suit not in possession shall, 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 of suit.

and the Court in its decree may award against the defendant the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

CHAPTER XXXVI.

Of temporary Injunctions.

494. If it be shown to the satisfaction of the Court that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, the Court may grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging or alienation of the property as the Court thinks fit.

Cases in which temporary injunction may be granted.

495. Where during the pendency of a suit it is shown to the satisfaction of the Court that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors, the Court may grant a temporary injunction to restrain such removal or disposition.

Temporary injunction against fraudulent removal.

496. In any suit for restraining the defendant from committing a breach of contract or other injury, and whether compensation be 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 the repetition or the continuance of the breach of contract or wrongful act complained of, or the committing 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.

Injunction to restrain repetition or continuance of breach.

Such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

In case of disobedience, an injunction granted under this section or section 494 or 495 may be enforced by the imprisonment of the defendant or the attachment of his movable property or both.

497. The Court may in all cases, and shall in all cases except those of great urgency, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction, Court may direct notice to be given to opposite party.

498. 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.

Injunction to corporation binding on its members and officers.

499. 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.

Order for injunction may be discharged, varied or set aside.

500. If it appears to the Court that the injunction was applied for on insufficient grounds, or

Compensation to defendant for issue of injunction on insufficient grounds.

if, after the issue of the injunction, the claim of the plaintiff is dismissed or judgment is given against him by default or otherwise,

and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction:

Provided that the Court shall not award a larger amount under this section than it is competent to such Court to decree in a suit for compensation.

Proviso.

An award of compensation under this section shall bar any suit for damages in respect of the issue of the injunction.

CHAPTER XXXVII.

Appointment of Receivers and Managers, and Deposit in Court.

501. Whenever it appears to the Court to be necessary for the preservation or the better management or custody of any immovable property which is in dispute in a suit in such Court, the Court may

Powers of Court as to management of immovable property in suit.

(*a*) appoint a Receiver or Manager of such property, on such terms as to security or otherwise as to the Court seems fit;

and may, if need be,

(*b*) remove the person in whose possession or custody the property may be from the possession or custody thereof,

(*c*) commit the same to the custody of such Receiver or Manager,

(*d*) grant to such Receiver or Manager such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the management, protection, preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as the owner himself has, or such of those powers as the Court thinks fit.

502. If the property be land paying revenue to 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 appoint the Collector to be Receiver or Manager of such land, unless the Government by any general order prohibits the appointment of Collectors for such purpose, or in any particular case prohibits the appointment of the Collector to be such Receiver or Manager.

When Collector may be appointed Receiver.

503. When 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.

Deposit of money, &c., in Court.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVIII.

Reference to Arbitration.

504. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time during the litigation, apply in writing to the Court for an order of reference.

Parties to suit may apply for order of reference.

505. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

Nomination of arbitrator.

506. If the parties cannot agree with respect to the nomination of the arbitrator, or if the person whom they nominate refuses to accept the arbitration, and the parties are desirous that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

When Court to nominate arbitrator.

507. The Court shall, by an order, refer to the arbitrator the matter in difference which he may be required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

Order of reference.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit unless the reference be fruitless, in which case the Court may issue an order superseding the arbitration and restoring the suite to the file of the Court.

508. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators.

When 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 the decision shall be with the majority if the major part of the arbitrators agree, 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 determines

Death, incapacity, &c., of arbitrators or umpire.

509. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, the Court, if any of the parties so desire, may appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting or becoming incapable to act.

Appointment of umpire by Court.

510. Where the arbitrators are empowered by the terms of the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, the Court, upon the application of the party having served such notice as aforesaid, and upon proof to its satisfaction of such notice having been served, may appoint an umpire.

Power of arbitrator or umpire appointed under section 509 or 510.

511. An arbitrator or umpire appointed under either of the last two preceding sections shall have the like powers to act in the reference, as if his name had been inserted in the order of reference.

Summoning witnesses.

512. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine, as the Court is authorized to issue in suits tried before it.

Punishment for default, &c.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or being 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.

513. If from the want of the necessary evidence or information, or from any other cause, the arbitrator does not complete the award within the period specified in the order, the Court may, if it think fit, grant a further time, and from time to time enlarge the period for the delivery of the award.

When umpire may arbitrate in lieu of arbitrators.

514. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators

(*a*) if they have allowed the appointed time to expire without making an award, or

(*b*) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

Award to be signed and filed.

515. When an award in a suit has been made the person or persons who made it shall sign it and shall file it in Court, together with any documents which have been filed; and notice of the filing of the award shall be given to the parties.

Arbitrator or umpire may state special case.

516. Upon any reference by an order of Court, the arbitrator or umpire may, if he thinks fit and unless the Court otherwise directs, state his award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

Court may, on application, modify or correct award in certain cases.

517. The Court may, on the application of either of the parties, modify or correct an award,

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration, provided 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.

Order as to costs of arbitration.

518. The Court may also, on the application of either of the parties or of the person or persons making the award, make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

When award or matter referred to arbitration may be remitted.

519. In any of the following cases the Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit, that is to say:—

(*a.*) If the award has left undetermined any of the matters referred to arbitration, or if it determine any matter not referred to arbitration;

(*b.*) If the award is so indefinite as to be incapable of execution;

(*c*). If an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

520. An award remitted under section 519 becomes null and void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be liable to 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 superceding the arbitration and restoring the suit;

And no award shall be valid unless made within the period allowed by the Court.

Judgment to be according to award.

521. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case:

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees.

Agreement of parties to refer to arbitration may be filed in Court.

522. When any persons by an instrument in writing agree that any difference between them or any of them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in such Court.

Application to be stamped, numbered, and registered.

523. 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 have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Notice to show cause against filing it.

524. On such application being made, the Court shall direct notice thereof to be given to any of 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.

If no cause shown, agreement to be filed and order made thereon.

525. If no sufficient cause be shown against the filing of the agreement, the agreement shall be filed and an order of reference to arbitration shall be made thereon.

Explanation.—The fact that one of the parties to the agreement has revoked his consent to refer is not a sufficient cause within the meaning of this section.

Provisions of this chapter applicable to proceedings under order of reference.

526. The foregoing provisions of this chapter, so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under the last preceding section, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Filing award in matter referred to arbitration without intervention of Court.

527. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the whole matter to which the award relates, that the award be filed in Court.

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.

Application to be numbered and registered.

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.

Notice to parties to arbitration.

528. If no sufficient cause be shown against the award, the award shall be filed and may be enforced as a decree upon an award made under the provisions of this Chapter.

Filing and enforcement of such award.

CHAPTER XXXIX.

Of Proceedings on Agreement of Parties.

Parties interested in questions of fact or law may agree to abide by finding of Court thereon.

529. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing—

(*a*) that such question be stated in the form of a special case for the opinion of the Court; or

(*b*) that upon the finding of the Court in the affirmative or negative of such question, 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

(*c*) that some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*d*) that one or more of the parties shall do or perform, or refrain from doing or performing, some other particular act specified in the agreement.

Agreement to state value of subject-matter.

530. If the agreement is for the delivery of any property, or for the doing or performing, or the refraining from doing or performing, 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 numbered as a suit.

531. The agreement may be filed in the Court of the lowest grade having jurisdiction in the matter to which it relates, and, when so filed, 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 other or 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.

Parties to be subject to Court's jurisdiction.

532. After 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 in the agreement.

533. The case shall be set down for hearing as a suit instituted under chapter V., the provisions of which shall apply to such suit so far as the same are applicable.

Hearing and disposal of the case.

If the Court is satisfied, after an examination of the parties or taking such evidence as it thinks fit,

(*a*) that the agreement was duly executed by them, and

(*b*) that they have a *bonâ fide* interest in the question of fact or law stated therein, and

(*c*) that the same is fit to be tried,

it shall proceed to try the same and deliver judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

CHAPTER XL.

Of summary Procedure on Negotiable Instruments.

534. All suits upon bills of exchange, hundís, or promissory notes commenced in any High Court within six months after the same have become due and payable, may, in case the plaintiff desires to proceed under this chapter, be commenced as follows (namely)—

Commencement of suits upon bills of exchange, &c.

(*a*) the plaint shall be in the form prescribed by this Code ;

(*b*) the summons shall be in the form contained in the fourth schedule hereto annexed, No. 168, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear to or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend ;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree 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 a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

535. The High Court shall, upon application within the period of seven days from the service of such summons, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons or upon affidavits satisfactory to the Court, which disclose a defence, or 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, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

Defendant showing a defence upon the merits to have leave to appear.

536. After decree, the High Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to set aside decree.

537. In any proceedings under this chapter the High Court may order the bill 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 to be deposited with officer of Court.

538. 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 chapter for the recovery of the amount of such bill or note.

Recovery of costs of noting non-acceptance of dishonoured bill.

539. The provisions of this Code and all rules made under or by virtue of this Code shall, so far as the same are or may be made applicable, extend and apply to all proceeding under this chapter, except so far as such proceedings are regulated by this chapter.

This Code and rules made hereunder to apply to proceedings under this chapter.

540. The Local Government may, by notification in the official *Gazette*,

Power to extend this chapter.

(*a*) direct that all or any part of the provisions of this chapter shall, *mutatis mutandis*, apply to all or any of the Courts in the territories subject to such Government other than a High Court,

(*b*) direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and

(*c*) make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of Law.

Any such notification may be in like manner from time to time altered or annulled.

PART VI.

OF APPEALS.

CHAPTER XLI.

Bar of Appeals not expressly permitted.

541. Except as provided by this Code or by any other enactment for the time being in force, no appeal shall lie from any decree or order.

Bar of appeals not expressly permitted.

Illustration.

No appeal shall lie from a decree or order made in any suit under Act No. XIV. of 1859, section 15.

CHAPTER XLII.

Of Appeals from Original Decrees.

Appeal to lie from all original decrees, except when expressly prohibited.

542. Unless when otherwise expressly provided in this Code or by any other law for the time being in force, an appeal shall lie from the decrees or from any part of the decrees of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts:

Provided that no appeal shall be admitted on a question solely relating to costs, except under the circumstances mentioned in section 201.

Appeal to High Court to be heard by two or more judges.

543. If the appeal lie to the High Court, it shall be heard and determined by a Court consisting of two or more Judges of that Court.

How Appeals are to be preferred.

Form of appeal.

544. The appeal shall be made in the form of a memorandum presented in the Appellate Court within the period prescribed in this behalf by the Indian Limitation Act.

Memorandum to be accompanied by copy of decree.

545. The memorandum of appeal shall be accompanied by a copy of the decree appealed against.

Memorandum of appeal.

546. The memorandum of appeal shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

Appellant confined to grounds set out.

547. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of meeting the appellant's case on that ground.

Memorandum of Appeal to High Court may be general.

548. If the appeal be to the Hight Court, but not from a decree made by that Court in the exercise of its ordinary or extraordinary original civil jurisdiction, the memorandum of appeal, instead of stating the grounds of objection to the decree appealed against, may state only the dissatisfaction of the party preferring the appeal with the decree and his intention to file his grounds of objection subsequently.

Time for filing grounds of objection in such case.

In such case the grounds of objection shall be filed within one month from the date of the receipt in the High Court of the record of the suit in which the appeal is made, to be certified by an officer of the High Court at the time of the receipt of the record, or within such shorter period as the High Court by a general rule published in the local official *Gazette* may from time to time appoint.

Power to extend time for filing grounds of objection.

549. The High Court may, for sufficient reason, extend the time allowed in the last preceding section for filing the grounds of objection.

Separate grounds of objection to be on stamp-paper.

550. The grounds of objection, when filed separately from the memorandum of appeal, shall be written on a stamp-paper of the value of four rupees. If the grounds of objection cannot be contained in a single sheet of stamp-paper, every additional sheet used shall bear a stamp of one rupee.

Sections 545, 546 and 547 to apply to grounds of objection separately filed.

551. The provisions of sections 545, 546 and 547 shall apply to the grounds of objection when filed separately from the memorandum of appeal.

Effect of memorandum not being presented in time.

552. If the memorandum of appeal be not presented within the prescribed period and no sufficient cause be shown for the delay, the appeal shall be disallowed.

Effect of grounds of objection not being filed in time.

553. If the grounds of objection, when allowed to be filed separately, be not filed within the prescribed period or within the further time to which such period may have been extended by the Court, the appeal shall be struck off the file.

Rejection of memorandum or grounds of objection for informality or want of proper stamp.

554. If the memorandum of appeal or the grounds of objection be not drawn up in the manner hereinbefore prescribed, or do not bear the proper stamp, such memorandum or grounds may be rejected or returned to the appellant for the purpose of being amended within a time to be fixed by the Court.

When the Court rejects under this section any memorandum or grounds of objection, it shall record the reasons for such rejection.

One of several plaintiffs or defendants may obtain a reversal of the whole decree if it proceed on a ground common to all.

555. If there be more plaintiffs or more defendants than one in a suit, and the decree appealed against proceed on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants as the case may be.

Illustrations.

(*a*). A sues B and C on a promissory note. The defendants plead payment. The Court decrees in favour of A. B alone appeals. The Appellate Court, holding that payment has been made, may reverse the decree in favour of both B and C.

(*b*). A sues B and C on a promissory note. B pleads payment and C pleads the Limitation Act. The Court overrules both pleas and decrees in favour of A. B alone appeals. The Appellate Court may be of opinion that payment has been, but cannot on B's appeal, reverse the decree as regards C.

Power to adjourn hearing and direct persons appearing interested to be made parties.

556. If it appear to the Court at the hearing of an appeal that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been

made a party to the appeal, may be affected by the result of the appeal, the Court may adjourn the hearing of the appeal to a future day to be fixed by the Court, and direct that such person shall be made a respondent in the appeal.

Of staying and executing Decrees under Appeal.

Execution of decree not stayed solely by reason of appeal.

557. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may, for sufficient cause shown, order the execution to be stayed.

Such order shall not be made in any case unless the Court is satisfied—

(*a*). that irreparable injury may result to the party applying for stay of execution unless the order is made; and

(*b*). that the application has been made without unreasonable delay.

If the Court orders execution to be stayed, it may impose upon the appellant whatever terms it thinks fit as to giving security for the performance of its decree or otherwise.

Stay of execution of appealable decree before time for appealing has expired.

558. If an application be made for the execution of a decree which is open to appeal, before the time allowed for appeal has expired, and the Court which passed the decree has not received intimation of an appeal having been preferred therefrom, the Court may, if sufficient cause be shown, stay the execution.

Security required before making order to stay execution.

Before making an order to stay execution, the Court shall require security to be given by the party against whom the decree was passed for the due performance of the decree or order of the Appellate Court.

Security in case of order for execution of a decree appealed against.

559. If an order is made for the execution of a decree against which an appeal has been preferred, the Court which passed the decree may, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or 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.

No such security to be required from Government or public officers.

560. No such security as is mentioned in the last three preceding sections shall be required from the Government or from any officer of the Government sued as such.

Of Procedure in Appeal from Decrees.

Registry of memorandum of appeal.

561. When a memorandum of appeal is presented within the time allowed, the Appellate Court or the proper officer of that Court, if the memorandum be duly stamped and in the prescribed form, shall endorse thereon the date of presentment, and shall register the appeal in a book to be kept for the purpose.

Register.

Such book shall be called the Register of Appeals.

Appellate Court may require appellant to give security for costs.

562. The Appellate Court may, at 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 either of the appeal, or of the original suit, or of both:

When 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 independent of the property to which the appeal relates.

If such security be not furnished at the time of presenting the memorandum of appeal or within such time as the Court orders, the Court shall reject the appeal.

Appellate Court to give notice to Court whose decree is appealed against.

563. When the memorandum of appeal is registered, or when the grounds of objection are filed, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

Transmission of papers to Appellate Court.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court to which such notice is sent shall, upon the receipt thereof, transmit with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree is appealed against.

564. Either party may make an application in writing to the Court against whose decree the appeal is made, specifying any papers of which he requires copies to be made and deposited in such Court, and copies of such papers shall be prepared at the expense of the applicant and shall be deposited accordingly.

Day for hearing appeal.

565. A day shall be fixed by the Appellate Court for the hearing of the appeal.

The day shall be so fixed, with reference to the place of residence of the respondent and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear and answer the appeal on such day.

Publication and service of notice of day for hearing appeal.

566. Notice of the day fixed for hearing the appeal shall be struck up in the Appellate Court, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or his pleader in the manner provided in chapter VI. for the service of a summons to a defendant to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself

cause the notice to be served on the respondent or his pleader under the rules above referred to whenever it appears convenient to do so.

Contents of notice.

567. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the appeal will be heard *ex parte*.

Dismissal of appeal for appellant's default.

568. If on the day fixed for hearing the appeal or any other day subsequent thereto to which the hearing of the appeal may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

Hearing appeal *ex parte*.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

Dismissal of appeal where notice has not been served in consequence of appellant's failure to deposit cost of notice.

569. If on the day fixed for hearing the appeal it be found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the time allowed, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Proviso.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal, the respondent appears in person or by a pleader, or by a duly authorized agent.

Re-admission of appeal dismissed for default.

570. If an appeal be dismissed for default, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved to the satisfaction of the Court that the appellant was prevented by any sufficient cause from attending when the appeal was called on for hearing, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose on the appellant.

Re-hearing on application of respondent against whom *ex parte* decree is made.

571. When an appeal is heard *ex parte* in the absence of the respondent and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal: and if it be proved to the satisfaction of the Court that the respondent was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose on the respondent.

Upon the hearing respondent may object to decree as if he had preferred a separate appeal.

572. The respondent, though he may not have appealed against any part of the decree, may, upon the hearing, take any objection to the decree which he could have taken by way of appeal, provided he gives the appellant seven days' notice in writing of such objection.

Form of notice, and provisions applicable thereto.

Such notice shall be in the form of a memorandum, and shall be on the stamp-paper prescribed for petitions to the Court; and the provisions of sections 545, 546 and 547, so far as they relate to the form and contents of the memorandum of appeal, shall be applicable to such notice.

Explanation.—A respondent cannot by such notice raise questions between himself and any other respondent or defendant to the suit, but can only raise questions between himself and the appellant.

Remand of case by Appellate Court.

573. If without going into the merits, the Court against whose decree the appeal is made disposes of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the due determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, remand the case, together with a copy of the decree or order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register, and

(*a*) to proceed to investigate the suit on the whole merits, and pass a decree thereon; or

(*b*) to try a particular issue; or

(*c*) to take certain specified evidence.

When further evidence barred.

574. When a case is remanded with directions to take certain specified evidence, the Court to which the case is remanded shall not take any other evidence in the case.

Re-settlement, by Appellate Court, of defective issues.

575. When no preliminary point has been wrongly decided and no evidence has been excluded by the Court against whose decree the appeal is made, but the Appellate Court considers the issues to have been defective or insufficient, the Appellate Court shall not remand the case, but shall re-settle the issues and determine them itself.

Limit to remand.

576. The Appellate Court shall not remand a case for a second decision, except as provided in section 573.

When evidence on record sufficient, Appellate Court shall determine case finally.

577. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall finally determine the case notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

When Appellate Court may frame issues and refer them for trial to Court whose decree is appealed against.

578. If the Court against whose decree the appeal is made has omitted to raise or try any issue or to determine any question of fact which appears to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and (subject to the rules contained in the Indian Evidence Act, 1872,) prescribe

the manner in which the additional evidence required should be taken and the points to which it should be confined,

and such Court shall proceed to try such issue, and shall return to the Appellate Court its finding thereon together with the evidence.

Finding and evidence to be put on record.

579. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, file a memorandum of objections to the finding.

Objections to finding.

Such memorandum shall be on such stamp-paper and subject to such provisions as are prescribed for memorandums by sections 548 and 550.

Memorandum of objections.

Determination of appeal.

580. After the expiration of the period fixed for filing such memorandum, the Appellate Court shall proceed to determine the appeal.

Production of additional evidence in Appellate Court.

581. 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 against whose decree the appeal is made refused to admit evidence which ought to have been admitted, or

(*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 to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the reason for the admission shall be recorded on the proceedings of the Court.

Mode of taking additional evidence.

582. Whenever additional evidence is permitted to be received, the Appellate Court may either take such evidence, or require the Court against whose decree the appeal is made or any other Court, or may empower any person, to take such evidence, and to send it when taken to the Appellate Court.

Subject to the rules contained in the Indian Evidence Act, 1872, the Appellate Court may also prescribe the manner in which such additional evidence shall be taken.

Points to be defined and recorded.

583. In all cases where additional evidence is permitted to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the point so specified.

Of the Judgment in Appeal.

Judgment when and where to be pronounced.

584. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether held in appeal or in the Court against whose decree the appeal is made, to which a 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.

Language of judgment.

585. The judgment shall be written in the English language; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue.

Translation of judgment.

586. When the language in which the judgment is written is not the language in use in proceedings before the Court, the judgment shall, if any party so require, be translated into such language, and the translation shall be signed by the Judge.

Contents of judgment.

587. The judgment of the Appellate Court shall state—

(*a*) the points for determination;

(*b*) the decision thereupon;

(*c*) the reasons for the decision; and

(*d*) when the decree appealed against is reversed the relief to which the appellant is entitled,

and shall at the time that it is pronounced be dated and signed by the Judge or by the Judges concurring therein.

Date and signature.

Dissent to be recorded.

588. When 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.

Decision when appeal heard by two Judges only, and they differ.

589. When the appeal is heard by two Judges, if there is a difference of opinion upon the evidence, and one Judge concurs as to the facts with the Court which passed the decree appealed against, the appeal shall be determined according to the opinion of such Judge.

If the two Judges differ in opinion upon a point of law, they shall confer together and state the point, and the case shall be re-argued upon that point before one or more of the other Judges, and shall be determined according to the opinion of the majority of the Judges before whom the point is argued, including the Judges who first heard the appeal.

Decision when appeal heard by more than two Judges, and they differ.

590. When the appeal is heard by more Judges than two, the decision shall be according to the opinion of the majority.

But if their opinions be equally divided, the decree appealed from shall be taken as affirmed.

What judgment may direct.

591. The judgment may be for confirming or reversing or modifying the decree of the Court against which the appeal is made, 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 passed in appeal, the Appellate Court may pass a decree or order accordingly.

592. No decree shall be reversed or modified, nor shall any case be remanded in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity.

OF THE DECREE IN APPEAL.

593. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

Contents of decree.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed by the Judge or Judges who passed it, and shall be sealed with the seal of the Court.

594. Where there are more Judges than one if there be 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.

Judge dissenting from judgment need not sign decree.

595. Certified copies of the judgment and decree shall be furnished to the parties, in the same manner as provided in section 196 in regard to the decrees of Courts of original jurisdiction.

Copies of judgment and decree to be furnished to parties.

596. A copy of the decree or other order disposing of the appeal, certified by the Appellate Court or the Registrar or Clerk of the Court, and sealed with the seal of the Court, shall be sent to the Court which passed the decree appealed against, 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 the suit.

Certified copy of decree to be transmitted to Court whose decree appealed against.

597. Unless when otherwise provided in this Code or by any other law, the Appellate Court shall have the same powers in appeals under this chapter in respect to adjournments, granting of time, arrest or attachment before judgment, issue of injunctions, examination of the parties or their pleaders and of witnesses or other persons, issue of commissions, award of interest or mesne profits, separation of misjoined suits, permission to bring fresh suits, or otherwise, as are vested by this Code in Courts of original jurisdiction in respect of suits instituted under chapter V.

Appellate Court to have same powers as Courts of original jurisdiction.

The provisions of such chapter and those of chapter XXXVIII. relating to arbitration, unless when otherwise provided, shall apply to appeals under this chapter so far as the same are applicable.

598. When a party in whose favour a decree is passed in an appeal under this chapter is desirous of obtaining execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred, and such Court shall proceed to execute the decree passed in appeal, in the manner and according to the rules hereinbefore provided for the execution of decree in suits.

Execution of decree of Appellate Court.

CHAPTER XLIII.

OF APPEALS FROM APPELLATE DECREES.

599. Unless when otherwise provided in this Code or by any other law, from all decrees passed in appeal by the subordinate Courts, an appeal shall lie to the High Court on any of the following grounds, (namely)—

Partial appeals to High Court.

(*a*) the decision being contrary to some law or usage having the force of law;

Grounds of partial appeal.

(*b*) the decision having failed to determine some issue of law or usage having the force of law;

(*c*) a substantial error or defect in law in the procedure prescribed by this Code or any other law, which may have produced error or defect in the decision of the case upon merits.

600. No appeal from an appellate decree shall lie except on the grounds mentioned in the last preceding section.

Partial appeal only on grounds mentioned in section 599.

601. No appeal shall lie from any appellate decree or order passed by any subordinate Court in any suit of the nature cognizable in Courts of Small Causes, when the debts, damage or demand for which the original suit is instituted, does not exceed the sum of five hundred rupees.

No appeal from appellate decree of subordinate court in certain suits.

Every such decree or order shall be final.

602. The appeal shall be made in such form as is prescribed for appeals under chapter XLII.

Form of memorandum of appeal.

603. The memorandum of appeal shall be accompanied by copies of the judgments and decrees of the lower Appellate Court and of the Court of first instance.

Copies of judgments and decree to accompany memorandum.

604. The memorandum shall be signed by the pleader presenting it, and he shall certify in writing on the back of the memorandum that he has considered the grounds stated for an appeal under this chapter, and that, in his opinion, such of the grounds as he refers to by their numbers are reasonable grounds of appeal.

Pleader presenting it to certify that grounds stated are reasonable.

No pleader shall give such certificate unless he has been generally or specially authorized in that behalf by the High Court.

Appellants confined to grounds stated.

605. The appellant shall not, without the Court's leave, be heard in support of any ground of objection other than the grounds set forth in the memorandum.

Power to reject memorandum or return it for amendment.

606. If the memorandum of appeal be not in writing, or

if it be not drawn up and presented in the manner hereinbefore prescribed, or

if it be not signed or have not such certificate duly endorsed upon it as in section 604 mentioned, or

if it do not state any ground on which an appeal will lie under the provisions of section 599,

the Court may reject the memorandum or may return it to the party for the purpose of being amended within a time to be fixed by the Court.

The order for rejecting the memorandum or for returning it to the party may be passed by a single Judge of the Court.

Registry of application.

607. If the memorandum is in due form, it shall be registered in a book to be kept for the purpose, and the case shall proceed in all other respects under the rules provided in chapter XLII. so far as the same are applicable.

Application to be argued only by pleader signing it.

608. No application for an appeal from an appellate decree shall be filed or argued before the High Court by any pleader of the Court who has not signed the certificate required by section 604, or (where such pleader has been changed) a certificate to the same effect, to be written on the back of the application.

Execution of decree in partial appeal.

609. The decrees passed in appeal under this chapter shall be executed by the Court which made the decree in the suit in which such appeal was preferred, in the manner and under the rules hereinbefore provided for the execution of decree in suits.

CHAPTER XLIV.

Of Appeals from Orders.

Orders appealable.

610. An appeal shall lie from the following orders :—

(*a*) orders under section 17, staying proceedings in a suit,

(*b*) orders rejecting or returning plaints under section 52, clause (*d*), section 53, clause (*c*), or section 54, clauses (*b*) and (*d*),

(*c*) orders under section 111 or section 112 where a party refuses to answer a question put by the Court or fails to appear,

(*d*) orders under section 148 for attachment of property,

(*e*) orders under section 211 as to objections to draft conveyances or endorsements,

(*f*) orders under section 291 for setting aside, or section 292 for confirming a sale,

(*g*) orders under section 306 as to the distribution of surplus assets.

(*h*) orders under section 307, that the applicant shall be satisfied out of the proceeds of attached property,

(*i*) orders in insolvency matters under section 320, section 324, section 326, or section 327,

(*j*) orders as to paupers under section 409,

(*k*) orders as to interpleader suits under section 472, section 474 and section 475,

(*l*) orders passed under sections 478, 480, 481, 485, 490, 494, 495, 496, 500, 501,

(*m*) orders rejecting applications made under section 372 or 373 in cases open to appeal,

(*n*) orders passed under any of the provisions of this Code, imposing fines, or for the imprisonment of any person, except when such imprisonment is in execution of a decree.

Court which shall hear appeals.

611. An appeal from any order specified in section 610, clause (*i*), shall be heard by the District Court except when the Court passing it is itself the District Court in which case the appeal shall lie to the High Court.

When an appeal from any other order is allowed by this Code or by any other law, it shall (whatever be the value of the suit) be heard by the Court next above the Court by which the order was made.

Period for hearing and procedure in appeals from orders.

612. The period for presenting an appeal from an order and the procedure thereon shall in all respects be the same as in an appeal from a decree in a suit, as prescribed in chapter XLII, the provisions of which shall apply to appeals from orders under this chapter so far as they are applicable.

No appeal, before decree, from order passed in course of suit; but if decree appealed against, error or defect therein may be set forth.

613. Unless when otherwise provided in this Code, no appeal shall lie from any order passed in the course of a suit and relating thereto, prior to decree; but if the decree be appealed against, any error, defect or irregularity in any such order, affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal.

CHAPTER XLIV.

Of Pauper Appeals.

Who may appeal as pauper.

614. Any person entitled under this Code or any other law to prefer an appeal, who may be unable to pay the fee required for the petition of appeal may, on application, be allowed to appeal as a pauper, subject to the rules contained in chapters XXV., XLII., XLIII. and XLIV. in so far as those rules are applicable.

Contents of application.

615. The application to be allowed to appeal as a pauper shall be combined with the memorandum of appeal, and shall be accompanied by such schedule and other documents as are hereinbefore required in the case of an application by a pauper and in the case of a memorandum of appeal.

Procedure on application for admission of appeal.

616. The Court shall reject the application if upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees no reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

The Court may also reject the application if it be not drawn up in the mode prescribed by this chapter, or if it do not bear the proper stamp: or the Court may return the application to the party presenting the same for the purpose of being amended within a time to be fixed by the Court.

If the application lie to the High Court, the order rejecting it may be passed by a single Judge of the Court.

Enquire into pauperism to be made in what cases and by what Court.

617. If the application be not rejected upon any of the grounds above mentioned, enquiry shall be made into the pauperism of the applicant.

Such enquiry may be conducted either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court.

Proviso.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further enquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such enquiry.

When application rejected, time may be allowed for preferring appeal.

618. If the application be rejected, the Appellate Court may, if it think proper, allow the applicant a reasonable time for preferring an appeal.

CHAPTER XLVI.

Of Appeals to the Queen in Council.

'Decree' defined.

619. In this chapter, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order.

Admission of Appeals.

When appeals lie to Queen in Council.

620. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained—

an appeal shall lie to Her Majesty in Council,

(*a*) from any final decree passed on appeal by a High Court or other Court of final appellate jurisdiction,

(*b*) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

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

Value of subject-matter.

621. In each of the cases mentioned in clauses (*a*) and (*b*) of section 620,

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 matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

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

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

Bar of certain appeals.

622. Notwithstanding anything contained in section 620,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, 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, wherever 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;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 601, is final.

Application to Court whose decree is complained of.

623. Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decrees is complained of.

Time within which application must be made.

624. Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

Certificate as to value or fitness.

625. Every petition under section 623 must 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 621, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusal of certificate.

626. If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

Security and deposit required on grant of certificate.

627. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six

weeks from the grant of the certificate, whichever is the later date,

(*a*) give security for the costs of the respondent, and

(*b*) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her 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 Her 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:

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

628. When such security has been completed and deposit made to the satisfaction of the Court, the Court may,

(*a*) declare the appeal admitted, and

(*b*) give notice thereof to the respondent,

and shall then

(*c*) transmit to Her 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.

629. 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 order further security or payment.

630. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

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.

Effect of failure to comply with order.

631. If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

Refund of balance of deposit.

632. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 627.

PROCEEDINGS PENDING APPEALS.

Powers of Court pending appeal.

633. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced unless the Court admitting the appeal otherwise directs.

But the Court may, if it think fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court—

(*a*) impound any movable property in dispute or any part thereof, or

(*b*) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(*c*) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her 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 subject-matter of the appeal as it thinks fit.

Increase of security found inadequate.

634. If at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all 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.

EXECUTION OF ORDERS OF HER MAJESTY IN COUNCIL.

Procedure to enforce orders of Queen in Council.

635. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her

Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

Appeal against order relating to execution.

636. The orders made by the Court which enforces or executes the order of Her Majesty in Council relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Amendment of Act IX. of 1871, Schedule II., No. 169.

637. The first column of No. 169 of the second schedule annexed to the Indian Limitation Act, 1871, shall be read as if the following words were added thereto (that is to say) "or any order of Her Majesty in Council."

MISCELLANEOUS.

Power to make rules.

638. The High Court may, from time to time, make general rules consistent with this Act to regulate—

(*a*) the service of notices under section 625,

(*b*) the grant or refusal of certificates under sections 626 and 627 by Courts of final appellate jurisdiction subordinate to the High Court,

(*c*) the amount and nature of the security required under sections 627, 630, and 634,

(*d*) the testing of such security,

(*e*) the estimate of the cost of transcribing the record,

(*f*) the preparation, examination and certifying of such transcript,

(*g*) the revision and authentication of translations,

(*h*) the preparation of indices to transcripts of records, and of lists of the papers not included therein,

and all other matters connected with the enforcement of this chapter.

Publication of rules.

All such rules shall be published in the local official *Gazette*, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Legalization of existing rules.

All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act, shall so far as they are consistent with this Act be deemed to have been made and published hereunder.

Recorder of Rangoon.

639. In sections 620 and 638, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Construction of Bengal Regulation III. of 1828, section 4, clause 5.

640. The rules and restrictions referred to in Bengal Regulation III. of 1828, section IV., clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Act from the decisions of the High Court of Judicature at Fort William in Bengal.

Saving of Her Majesty's pleasure.

641. Nothing herein contained shall be understood—

(*a*) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

and of rules for conduct of business before Judicial Committee.

(*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 Her Majesty in Council, or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, nor to appeals from orders and decrees of Prize Courts.

PART VII.

OF REVIEW OF JUDGMENT.

Revisions and new trials to be according to Code.

642. The decrees and orders of the Courts shall not be open to revision, nor shall a new trial be granted, otherwise than under the rules contained in this Code.

Power to call for record of cases decided by Small Cause Courts, or, on appeal, by subordinate Courts.

643. The High Court may call for the record of any case decided by a Court of Small Causes, or, on appeal, by any subordinate Court, in which no appeal lies to the High Court, if such Court of Small Causes or such subordinate Court, on hearing the appeal, appear to have exercised a jurisdiction not vested in it by law, or to have passed any order contrary to law:

and may set aside the decision, or pass such other order in the case as the High Court thinks fit.

Review of judgment.

644. Any person considering himself aggrieved—

(*a*) by a decree from which an appeal is hereby allowed, where no appeal from such decree has been decided or is pending;

(*b*) by a decree from which an appeal is hereby allowed to Her Majesty in Council, but from which no appeal has been preferred;

(*c*) by an order made in execution of a decree;

(*d*) by a judgment 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 adduced by him

on discovery of new evidence, &c.

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 like reason, may be desirous of obtaining 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.

Explanation I.—A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party.

Explanation II.—A person who has preferred an appeal may abandon his appeal and apply for a review of judgment.

Explanation III.—Except on the discovery of such new and important matter or evidence as aforesaid, no application for a review of a judgment other than that of a High Court shall be made to any judge other than the Judge who delivered it.

Contents of application.

645. The application shall be chargeable with the fee prescribed for plaints and shall set forth concisely and under distinct heads the grounds on which the review is applied for.

Such grounds shall be numbered consecutively.

Pleader presenting application to certify as to grounds being good.

646. If the application be presented by a pleader, he shall certify, under his signature on the back of the application, that he has examined the grounds on which the review is applied for, and that he considers such of them as he refers to by their numbers well founded and sufficient.

No pleader allowed to argue who has not signed certificate.

647. No pleader shall be allowed to argue in support of an application for a review of judgment who has not signed the certificate required by section 646, or a certificate to the same effect, to be written on the back of the application.

Order of Court final.

648. If it appear to the Court that there is not sufficient ground for a review, it shall reject the application.

But if the Court be of opinion that the review desired is necessary to correct an evident error or omission in the decree, or is otherwise requisite for the ends of justice, it shall grant the review:

Proviso.

Provided that—

(*a*) no such review shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for:

(*b*) no such review shall be granted by any Court subordinate to a District Court without the previous permission of such Court:

(*c*) no such review shall be granted by a District Court without the previous permission of the High Court:

(*d*) no such review shall be granted on the ground of discovery of new matter or evidence which was not within the applicant's knowledge, or could not be adduced by him when the decree was passed, without strict proof of such allegation.

Application for review in Court consisting of two or more Judges.

649. If the Judge or Judges, or any of the Judges, who passed the decree, a review of which is applied for, continue attached to the Court at the time when the application for a review is presented, and are not precluded by absence or other cause, for a period of six months after the application, from considering the judgment to which the application refers, such Judge or Judges or any of them shall hear the application, and it shall not be competent to any other Judge or Judges of the Court in any such case to hear the application.

Application when rejected.

650. If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority the decision shall be according to the opinion of the majority.

Order of Court final.

651. The order of the Court whether for granting the review or rejecting the application shall be final.

Registry of application granted, and order for re-hearing.

652. When an application for a review is granted, a note thereof shall be made in the register of suits or appeals (as the case may be), and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Review of orders not subject to appeal.

653. Any order not subject to appeal may be reviewed by the Court by which it was passed subject to the rules contained in this chapter so far as the same are applicable:

Provided—

(*a*) that no such review shall be granted by any Court subordinate to a District Court without the previous permission of such Court, and

(*b*) that no such review shall be granted by a District Court without the previous permission of the High Court.

PART VIII.

Of Reference to the High Court.

Reference of question to High Court.

654. If in the hearing of an appeal in which the decree or order is made final by section 601, any question of law or usage having the force of law, or the construction of a document which construction may affect the merits, arises, on which the Court trying the appeal entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties to the suit, draw up a statement of the case, and submit such statement with its own opinion for the decision of the High Court.

Court may pass decree contingent upon opinion of High Court.

655. The Court may proceed in the appeal notwithstanding a reference to the High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued in any case in which reference is made to the High Court until the receipt of the order of that Court.

Two or more Judges of High Court to hear reference.

656. References made for the opinion of the High Court under section 654, shall be heard by two or more Judges of that Court.

High Court to fix day for hearing and to notify same.

657. The High Court shall fix an early day for the hearing of the reference, and notice of such day shall be fixed up in the Court-house.

Parties may appear and be heard in person or by pleader.

658. The parties to the appeal in which the reference is made may appear and be heard in the High Court in person or by a pleader.

Judgment of High Court to be transmitted and case disposed of accordingly.

659. The High Court, when it has heard and determined the point referred to it, shall transmit a copy of its judgment, under the seal of the Court and 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 appeal in conformity with the decision of the High Court.

Costs of reference to High Court.

660. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the appeal.

NON-APPEALABLE ORDERS AND DECREES.

Order passed in appeals under Chapter XLIV. to be final.

661. Unless when otherwise provided in this Code or by any other law, the orders passed in appeals preferred under chapter XLIV. shall be final;

But case may be submitted for decision of High Court.

But if in the course of the hearing of any such appeal there arises any such question as is mentioned in section 654 on which the Appellate Court entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties to the appeal, draw up a statement of the case, and submit it with its own opinion thereon for the decision of the High Court.

Provisions applicable to references to High Court.

662. The provisions contained in sections 656 to 606, both inclusive, shall apply to references made to the High Court under the provisions of section 661.

PART IX.

SPECIAL RULES RELATING TO THE HIGH COURT.

This Part to apply only to certain High Courts.

663. This Part shall extend and apply only to High Courts which are or may hereafter be established under the Statute 24 & 25 Victoria, Chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Application of Code to High Courts.

Except as provided in this Part, the provisions of this Code shall apply to the High Courts established as aforesaid.

Jurisdiction.

Ordinary original civil jurisdiction of the High Court.

664. The High Court may in the exercise of its ordinary original civil jurisdiction, try and determine suits of every description, if,

(*a*) in the case of suits for immovable property, the property or any part thereof is situate, or,

(*b*) in all other cases, the cause of action, or any material part of the cause of action, has arisen, or the defendant or any of the defendants at the time of the commencement of the suit dwells or carries on business, or personally works for gain, within the local limits of such jurisdiction:

Provided that the leave of the Court be first obtained

(*c*) in the case of suits for immovable property where only part thereof is situate within such limits; and

(*d*) in other cases where only part of the cause of action has arisen, or only some of the defendants at the commencement of the suit dwell or carry on business or personally work for gain within such limits:

Provided also that no High Court shall, in the exercise of its ordinary original civil jurisdiction, try any case in which the debt, or compensation, or value of the property sued for, does not exceed five hundred rupees, and which falls within the jurisdiction of a Small Cause Court situate within the local limits of such jurisdiction.

Extraordinary original civil jurisdiction of the High Court.

665. The High Court shall have power to remove and to try and determine as a Court of extraordinary original civil jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, other than a Court of Small Causes, when such High Court thinks proper so to do, either on the agreement of the parties to that effect, or for purposes of justice, the reason being recorded in the proceedings of the High Court removing the suit.

Power to High Court to provide for exercise of its jurisdiction.

666. Subject to any express provision of this Code, the High Court shall by its own rules provide for the exercise of its jurisdiction by means of its Judges sitting in Division Courts or singly or in groups, and for the guidance of its subordinate officers in such manner as may appear to the High Court to be most convenient for the administration of justice.

High Court to record judgments according to its own rules.

667. The High Court shall take evidence, and record judgments and orders in such manner as it shall by any rule from time to time direct.

668. If a Court is composed of more Judges than one, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there is a majority;

Decision when Judges of Court differ.

but if the Judges are equally divided, then the opinion of the senior Judge shall prevail.

669. Whenever a Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced 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;

Power to order execution of decree before ascertainment of costs, and execution for costs subsequently.

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.

670. Whenever in any suit or proceeding coming before a Court in the exercise of its ordinary original civil jurisdiction,

Acts required to be done by pleader may be done by an Attorney.

or in any appeal coming before a Court from a decision passed by such Court in the exercise of its ordinary original civil jurisdiction,

anything is directed by this Code to be done by or through a pleader,

such act may be done by or through an attorney of the Court:

Provided that no attorney shall under the provisions of this section, be entitled to argue for any person in Court.

Proviso.

671. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary original civil jurisdiction of the High Court, except writs of summons to defendants issued under section 62 and writs of execution, may be served by the attorneys in the suit or by persons employed by them, or in such other manner as the High Court by any rule or order from time to time directs.

Process of High Courts may be served by attorneys in suit.

672. If in any suit instituted in the High Court in the exercise of its ordinary original civil jurisdiction, the Court hearing such suit is of opinion that any matter of account, detail or other description may be more conveniently investigated by a Judge sitting in chambers, or by an officer, of the Court, such Court may refer such matter for the consideration of a Judge in chambers, or the Registrar or some other officer, and such matter shall thereupon be investigated by such Judge or Registrar or other officer, who shall proceed with such investigation and make his report thereon.

Power of Court to refer matters for investigation by Judge in chambers.

Such report shall, if made by a Judge, be open to revision by any Court of Appeal to which the order or decree founded thereon may be appealable, and, if made by the Registrar or other officer, shall be open to revision by the Judge by whom the matter was so referred, or by such other Judge as the Chief Justice appoints in that behalf.

The Chief Justice shall from time to time determine in each case what Judge shall take or proceed with the investigation of any matter referred to a Judge under the provisions of this section.

673. The High Court may make general rules and orders for regulating the conduct of business and the procedure of a single Judge, Registrar or other officer in respect of investigations under section 672:

Power to make rules.

Provided that such rules and orders shall not be inconsistent with the provisions of this Code or of any other law.

674. Whenever under any of the provisions of this Code the signature of a Judge of the High Court is required, the signature of the Registrar or of any other officer authorized in that that behalf by the Chief Justice shall have the same effect as the signature of a Judge of the Court.

Signature of Registrar or other appointed officer to have same effect as that of Judge.

675. The Chief Justice shall from time to time declare what language shall be the language of the Court in which all or any of the proceedings of the Court shall be conducted.

Language of High Court.

676. The provisions of this Code relating to assessors shall without any order of Government extend to suits and appeals instituted or tried in the High Courts.

Provisions as to assessors to apply to High Courts.

677. Nothing herein contained shall debar the High Court from rescinding or modifying any interlocutory order passed by it in the course of a suit.

Power to rescind or modify interlocutory order.

678. Nothing in this Code shall be held to authorize a Vakil to appear, plead or act in the High Court in the exercise of its original civil jurisdiction.

Vakils not to practise on the original side.

679. The following sections shall not apply to the High Court in the exercise of its ordinary original civil jurisdiction, namely, sections 32, 33, 34, 35 and 39.

Sections 32, 33, 34, 35 and 39 not to apply to High Court.

680. Any act not of a judicial nature which this Code requires to be done by a Judge, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to perform such act.

Non-judicial acts may be done by Registrar.

681. All summonses obtainable under this Act by the parties to a suit in the High Court, may be obtained from the proper officer by the attorneys of the parties respectively, and may be served by such attorneys on the persons named therein, and all rules contained in this Code relating to the service of summonses shall apply to summonses obtained under this section.

Summonses may be obtained from Registrar by attorney.

PROCEDURE IN ADMIRALTY CASES.

682. The procedure in civil cases brought before the High Court in the exercise of its Admiralty or Vice-Admiralty jurisdiction shall be regulated, so far as the circumstances of the case will permit, by the rules prescribed in this Code.

Procedure in admiralty cases.

In the following cases in the exercise of such jurisdiction, (namely)—

(*a*) cases in which a ship, or a ship and cargo have been or are to be proceeded against or arrested,

(*b*) cases in which goods only have been or are to be proceeded against or arrested, either for the purpose of proceeding against the goods or the freight due thereon,

(*c*) cases in which property has been or is arrested and no party has appeared or appears at the return of the warrant; and

(*d*) all other cases in the exercise of Admiralty or Vice-Admiralty jurisdiction in which the rules contained in this Code are not applicable,

the practice and procedure shall be regulated as nearly as possible by the Rules and Regulations made and ordained by his late Majesty King William the Fourth in Council in pursuance of the Second of William the Fourth, Chapter 51, and touching the practice to be observed in the several Courts of Vice-Admiralty in the Colonies, except so far as such rules may be inconsistent with the Twenty-fourth and Twenty-fifth of Victoria, Chapter 104, or with the Letters Patent granted in pursuance thereof.

683. In suits for mariners' wages brought before the High Court in the exercise of Admiralty or Vice-Admiralty jurisdiction, any number of mariners may proceed jointly in one suit.

Joinder of mariners in suits for wages.

MATTERS TESTAMENTARY AND INTESTATE.

684. The procedure in all cases brought before the High Court in the exercise of its original Testamentary and intestate jurisdiction shall be regulated, as far as the circumstances of the case will admit, by the rules of procedure laid down in the Indian Succession Act, 1865, whether the Act itself applies to the case or not. In cases to which such rules are inapplicable, the procedure shall, so far as possible, be regulated by this Code.

Procedure in testamentary and intestate cases.

INSOLVENT JURISDICTION.

685. Nothing in this Part shall extend or apply to any High Court in the exercise of its jurisdiction as an Insolvent Court.

Code not to affect High Court in exercise of insolvent jurisdiction.

PART X.

MISCELLANEOUS.

High Court consisting of a single Judge.

686. When in any part of British India in which this Code operates, the highest Civil Court of appeal consists of a single Judge, he shall have all the powers vested by this Code in two or more Judges of the High Court.

Powers of highest Court of appeal consisting of single Judge.

Assessors.

687. In any Court to which the provisions of this section and of the next succeeding section are extended by an order of the Local Government, notified in the official *Gazette*, the Court may order the hearing of any suit to be conducted in the presence and with the aid of two or more Assessors as members of the Court.

Power to order hearing of suits with assessors and to appoint them.

The Court shall have power to appoint such assessors if willing to serve.

688. The opinion of each assessor, if given orally, shall be recorded in writing by the Court; but such opinion shall be in no way binding upon the Judge, with whom exclusively the decision of the suit shall rest.

Recording and effect of opinion of assessors.

Service of Process.

689. Wherever this Code provides that any notice, summons, letter or other communication may be sent to the person to whom it is addressed by post, proof that the same was correctly addressed to such person at his place of residence, and that it was posted and registered according to the law for the time being regulating the management of the Post Office shall, in the absence of evidence to the contrary, be sufficient proof of the due service and delivery of the notice, summons, letter or other communication.

Proof of due service and delivery of process sent by post.

690. Every process required to be issued under this Code shall be served at the expense of the party at whose instance it is issued, unless the Court otherwise direct.

Process to be served at expense of party issuing it.

The sum required to defray the costs of such service shall be paid into Court before the process is issued, within a period to be fixed by the Court issuing the process.

Postage, where chargeable on any notice, summons, letter or other communication forwarded by post and the fee for registering the same, shall be costs required to be paid as aforesaid within the meaning of this section.

Fixing of costs of service.

In fixing the costs to be paid for service of process, regard shall be had to any law or to any rules issued by the High Court for fixing the amount of such costs.

Service in Presidency Towns of Mofussil Process.

Service within limits of local jurisdiction of High Courts of process issued by Courts without those limits.

691. Whenever any process issued by any Court established beyond the local limits of the ordinary original civil jurisdiction of a High Court is to be served within the local limits of such Court, it shall be delivered to the Court of Small Causes within whose jurisdiction the process is to be served,

and shall be executed by such Court of Small Causes in the same manner as if such process had been issued by such Court,

and, after having been so executed, shall be returned to the Court by which it was issued.

The delivery of the process to the Court required to execute the same, and its return to the Court by which the process was issued, may be by an officer of the Court which issued the process, or by post.

EXEMPTION FROM PERSONAL APPEARANCE.

Exemption of certain women from personal appearance.

692. 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.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

Local Government may exempt certain persons from personal appearance.

693. The Local Government may, at its discretion, exempt from personal appearence in Court, whether summoned by his opponent or called for by the presiding Judge, any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may at its discretion withdraw such privilege.

List of names of persons exempted to be kept in the District Court.

694. The names of the persons so exempted and residing within the jurisdiction of the District Court, shall from time to time be forwarded to such Court by the Local Government, and a list of such persons shall be kept in such Court and in the several subordinate Courts of the district.

Costs of Commission rendered necessary by claiming privilege.

695. When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he must pay the costs of that commission.

EXEMPTION FROM ARREST.

Persons exempt from arrest.

696. Except as hereinafter provided, no person shall be liable to arrest under this Code while attending, ging to, or returning from the Court, either in obedience to a summons or as a party to a suit, appeal or other proceeding.

OFFENCES IN COURT.

Punishment for verifying false plaint, statement or declaration.

697. If any plaint, written statement, or declaration in writing required by this Code to be verified contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be subject to punishment according to the provisions of the law for the punishment of giving or fabricating false evidence.

Procedure when certain offences under Chapter XI. of Penal Code are committed in case pending before Court.

698. When in a case pending before any Court, any person appears to the Court to have been guilty of an offence punishable under section 193, 194 195, 196, 199, 200, 205, 206, 207, 208, 209 or 210 of the Indian Penal Code, the Court may commit such person to take his trial for the offence before the proper Court, or,

after making such preliminary enquiry as is necessary, may send the case for investigation to any Magistrate having jurisdiction to try or commit for trial the accused person for the offence charged, and such Magistrate shall thereupon proceed according to law.

Court may take bail and bind over witnesses to give evidence.

699. The Court may send the person accused in custody or take sufficient bail for his appearance before the Magistrate, and may bind over any person to appear and give evidence before the Magistrate.

Charge to be framed and sent to Magistrate.

700. When the commitment is made by the Court, the Court shall frame a charge in the manner provided in chapter XXXIII. of the Code of Criminal Procedure, and shall send the same with the order of commitment and the record of the case to the Magistrate, and such Magistrate shall bring the case together with the witnesses for the prosecution and defence before the Court of Session.

Procedure in certain cases of contempt of lawful authority of public servants.

701. When any person appears to the Court to have been guilty in any suit or proceeding before such Court of any of the offences described in sections 172, 173 and 174 of the Indian Penal Code, the Court may direct the person accused to be brought before it, and may either proceed as provided in the last three preceding sections, or may send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate, and and the Magistrate shall thereupon proceed according to law.

Procedure in case of certain offences relating to documents.

702. When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 463, 471, 474, 475, 476 or 477 of the Indian Penal Code, which may be preferred in respect to any document offered in evidence in the case, the Court may send the person accused in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

GENERAL RULES.

Power of High Court to make general rules.

703. The High Court shall have power to make and issue general rules not inconsistent with the provisions of this Code or of any other law, for regulating the practice and proceedings of that Court and the Courts subordinate thereto, and from time to time to alter any such rules.

All rules framed under this section shall be published in the official *Gazette* of the place where the High Court is held.

Power to frame forms.

704. The High Court shall have power to frame forms for every proceeding in such Court and the subordinate Courts, for which the High Court thinks it necessary that forms should be provided; for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by such Courts.

Use of forms in fourth schedule.

Subject to the power conferred on the High Court by the former part of this section the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned.

Ministerial Officers.

Ministerial Officers.

705. The Local Government shall fix the establishments of ministerial and other officers requisite for the Courts other than the High Court within the limits of its jurisdiction, and with the sanction of the Governor General in Council, shall assign to such officers such salaries as from time to time such Government thinks fit.

High Courts to define duties of all ministerial officers.

The High Court may define and describe the duties to be performed by the ministerial and other officers on its establishment, as well as by the ministerial and other officers on the establishments of subordinate Courts.

Language of Courts.

Language of subordinate Courts.

706 The language which, at the time this Code comes into operation, is the language of any subordinate Court, shall continue to be the language of such Court until the Local Government otherwise orders;

But it shall be lawful for the Local Government from time to time to declare what language shall be the language of every such Court in which all or any of the proceedings shall be conducted.

Exemption of Advocates.

Exemption of advocates from filing powers.

707. No advocate of any High Court shall be required to file or present a mukhtárnáma or wakálatnáma, or any other document empowering him to act.

Deposit in lieu of Security.

Deposit in lieu of security.

708. When security is required to be furnished by any person, the Court may permit such person to deposit in Court a sum of money, Government Promissory Notes, or other valuable property to such amount as the Court may fix, in lieu of the security required.

Miscellaneous Cases.

Miscellaneous cases and proceedings.

709. The procedure herein prescribed shall be followed from the date on which this Code shall come into operation, in all suits and appeals, and, as far as it can be made applicable, in all miscellaneous cases and proceedings instituted in any Court.

But this Code shall not in any way invalidate or alter the effect of anything done in any suit, appeal, miscellaneous case, or proceeding prior to such date, and every thing so done shall be deemed good and shall have effect so far as circumstances will permit, in like manner as if the same had been done in due course under this Code:

Proviso.

Provided that no party to whom a right of appeal has accrued under any law for the time being in force before this Code has come into operation, shall be deprived of such right by anything contained in this Code, if he exercise such right by preferring his appeal to the proper Court in due form within the time allowed for preferring appeals by the law under which the right of appeal accrued.

Powers of Local Government.

Power to invest Chief Executive Officer with powers of Local Government.

710. The Governor General in Council may invest the Chief Executive Officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Code in a Local Government.

Saving of Limitation-law.

Saving of limitation-law.

711. Save as provided by section 19, nothing herein contained shall be deemed to give a right to institute a suit, present an appeal or make an application, which if this Act had not passed, would have been barred by the law of limitation.

THE FIRST SCHEDULE.

(See Section 3.)

Acts Repealed.

Number and Date.	Subject or Title.	Extent of Repeal.
IX. of 1840	For amending the law administered in Her Majesty's Courts of Justice with reference to Arbitrations, Damages, and interested Witnesses.	So much as has not been repealed.
XXIII. of 1840	For executing within the local limits of the jurisdiction of Her Majesty's Courts Legal Process issued by authorities in the Mofussil.	So far as it relates to the execution of the process of Civil Courts.
VIII. of 1841	Interpleader	The whole.
XXVI. of 1841	Extending 3 & 4 Wm. IV., c. 42	So much as has not been repealed.
XIV. of 1848	Commissions for taking affidavits	The whole.
XVII. of 1852	Special cases	The whole.
XXXIII. of 1852	Enforcement of judgments	The whole Act, except so far as it relates to the decrees of Military Courts of Requests.
VI. of 1855	Writs of execution	The whole.
XXXIV. of 1855	Execution of judgments	The whole.
VIII. of 1859	For simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	The whole Act, except sections fifteen and one hundred and ninety-two.
XXIII. of 1861	To ament Act VIII. of 1859.	So much as has not been repealed.
XX. of 1862	To provide for the levy of Fees and Stamp Duties in the High Court, &c.	So much as has not been repealed.
XXIV. of 1862	To continue in force Act XX. of 1862. ...	So much as has not been repealed.
IX. of 1863	To amend the Code of Civil Procedure ...	The whole.
XVIII. of 1863	To make provision for the speedy and efficient disposal of the business, &c.	So much as has not been repealed.
XXXII. of 1863	To continue in force Act XX. of 1862 ..	So much as has not been repealed.
XI. of 1865	Mofussil Small Cause Courts Act	Section 47.
V. of 1866	To provide a summary procedure on Bills of Exchange, &c.	In the title, the words '*to provide a summary procedure on Bills of Exchange, and*'. The preamble down to and including the words 'Notes; and'. In section 1 the definitions of 'High Court' and 'Local Government.' Sections two to eight (both inclusive). Section fourteen.
XXVI. of 1867	To amend the law relating to Stamp Duties .	So much as has not been repealed.
VI. of 1874	The Privy Council Appeals Act, 1874 ...	The whole.

THE SECOND SCHEDULE.

(See Section 5.)

Sections extending to Mofussil Courts of Small Causes.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*.
CHAPTER II.—Of the Place of Suing, except sections 21 to 26, both inclusive.
CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 47.

CHAPTER V.—Of the Institution of Suits, except the first paragraph of section 65.
CHAPTER VI.—Service of Summons on the Defendant, except section 74.
CHAPTER VII.—Of the Appearance of the Parties and consequence of Non-appearance.
CHAPTER VIII.—Of Written Statements, section 105.
CHAPTER IX.—Of the Examination of the Parties at the first Hearing.
CHAPTER X.—Of the Admission, &c., of Documents, except section 121.
CHAPTER XII.—Disposal of the Suit at the first Hearing, section 136.
CHAPTER XIII.—Of Adjournments.
CHAPTER XIV.—Of Summoning Witnesses.
CHAPTER XV.—Examination of Parties and Witnesses, except sections 169 to 176 both inclusive.
CHAPTER XVI.—Of Judgment and Decree, except sections 184, 187, 188, 191, 193 and 194.
CHAPTER XVII.—Of Costs, sections 198, 199 and 200,
CHAPTER XVIII.—Of the Execution of Decrees, sections 203 to 228 both inclusive, sections 231 to 243 both inclusive, sections 253 to 261 both inclusive, sections 264 to 267 both inclusive, sections 273 to 275 both inclusive, sections 277 to 281 both inclusive, section 287 so far as relates to resales under section 281, section 188, 290, 296, 297, 300, 301, 302, sections 305 to 342, both inclusive, sections 345, 346, 351 and 352.
CHAPTER XIX.—Of the Death, Marriage and Insolvency of Parties.
CHAPTER XX.—Of the Withdrawal and Adjustment of Suits.
CHAPTER XXI.—Of Payment into Court.
CHAPTER XXII.—Of requiring Security for Costs.
CHAPTER XXIII.—Of setting aside Decrees by Default and *ex parte*.
CHAPTER XXIV.—Of Commissions.
CHAPTER XXV.—Suits by Pauper.
CHAPTER XXVI.—Suits by and against Government or Government Servants.
CHAPTER XXVII.—Suits by and against Native and Foreign Rulers.
CHAPTER XXVIII.—Suits by and against Corporations and Companies.
CHAPTER XXIX.—Suits by and against Trustees, Executors and Administrators.
CHAPTER XXX.—Suits by and against Minors and Persons of unsound Mind.
CHAPTER XXXI.—Suits by infirm Persons and Women.
CHAPTER XXXII.—Suits by and against Military Men.
CHAPTER XXXIV.—Of Arrest before Judgment.
CHAPTER XXXV.—Of Attachment before Judgment, except section 493.
CHAPTER XXXVIII.—Reference to Arbitration, sections 504 to 521 both inclusive.
CHAPTER XXXIX.—Of Proceedings on Agreement of Parties.
PART X.—Miscellaneous, sections 692 to 704 both inclusive, sections 706 to 710 both inclusive, and section 712.

THE FIRST SCHEDULE.

(*See Section* 7.)

Bombay Enactments.

Bombay Regulation XXIX, 1827.
" " VII, 1830.
" " I, 1831.
" " XVI, 1831.
Act XIX of 1835.
" XIII of 1842.

THE FOURTH SCHEDULE.

(*See Section* 704.)

FORMS OF PLEADINGS AND DECREES.

A. PART I. PLAINTS.

No. 1.

FOR MONEY LENT.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against.

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , he lent the defendant rupees repayable on demand [*or* on the day of].

2. That the defendant has not paid the same, except rupees paid on the day of 18 .

[*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. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed the statement may be omitted.

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

IN THE COURT OF AT

Civil Regular No.

A. B. of and *G. H.* of
against
C. D. of

A. B. and *G. H.*, the above-named plaintiffs, state as follows:—

1. That on the day of 18 , at , the defendant received rupees [*or* a cheque on the Bank for Rs.] from one *E. F.* for the use of the plaintiffs.

2. That the defendant has not paid [*or* delivered] the same accordingly.

3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at he and *E. F.* since deceased delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or, as the case may be*] for sale upon commission.

2. That on the day of 18 , [*or*, on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandise for rupees.

3. That the commission and expenses of the defendant thereon, amount to rupees.

4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandise.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. That the plaintiff procured the said bars to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Rs. annas therefor.

3. That each of the said bars contained only 1,200 tolals of fine silver.

4. That the defendant has not repaid the sum so overpaid.

[*Demand of judgment.*]

[NOTE.—A demand of repayment is not necessary; but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , at the request [*or* by the authority] of the defendant, the plaintiff paid to one *E. F.* rupees.

2. That, in consideration thereof, the defendant promised [*or* became bound] to pay the same to the plaintiff on demand [*or as the case may be*].

3. That [on the day of 18 , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[*Demand of judgment.*]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , *E. F.* of deceased sold and delivered to the defendant [one hundred barrels of flour, *or*, the goods mentioned in the schedule hereto annexed, *or*, sundry goods].

2. That 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. That he has not paid the same.

4. That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof .

5. That on the day of 187 the said *E. F.* died.

6. That on the day of probate of the said will was granted to the plaintiff by the Court of.

7. The plaintiff as executor as aforesaid [*Demand of judgment*].

[NOTE.—If a day was fixed for payment, it should be stated, as furnishing a date for the commencement or interest].

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows: —

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant [*sundry articles of house furniture*], but no express agreement was made as to the price.
2. That the same were reasonably worth rupees.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

[NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff sold to the defendant [*one hundred barrels of flour*] and, at the request of the defendant, delivered the same to one *E. F.*
2. That the defendant promised to pay to the plaintiff rupees therefor.
3. That he has not paid the same.

[*Demand of judgment.*]

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST AT A REASONABLE PRICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff furnished to [*Mary Jones*], the wife of *James Jones* deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth rupees.
4. That the said *James Jones* refused to pay the same.
5. That the defendant is the executor of the last will of the said *James Jones*.

[*Demand of judgment.*]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold to *E. F.* of deceased [*all the crops then growing on his farm in*].
2. That the said *E. F.* promised to pay the plaintiff rupees for the same.
3. That he did not pay the same.
4. That the defendant is administrator of the estate of the said *E. F.*

[*Demand of judgment*].

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.* of sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.
2. That the same was reasonably worth rupees.
3. That the defendant has not paid the same.
4. That on the day of the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate with the usual powers for the management thereof.
5. The plaintiff as committee as aforesaid [*Demand of judgment.*]

NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following :—

4. That on the day of the Civil Court of duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs and appointed the plaintiff Manager of his estate.
5. The plaintiff as Manager as aforesaid [*Demand of judgment.*]

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.* of agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon delivery thereof rupees.

2. That the plaintiff made the said goods, and on the day of 18 offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.

3. That the said *E. F.* has not paid for the same.

4. That on the day of the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the defendant committee of his estate.

5. Wherefore the plaintiff demands judgment for rupees with interest from the day of , at the rate of per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof, within [*ten days*] after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*], at the said auction at the price of rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[*Demand of judgment.*]

[NOTE to § 4. Unless the seller agreed to deliver, the purchaser must fetch the goods. See Act IX. of 1872, sec. 93.]

No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff sold [and conveyed] to the defendant [the house and compound No. , in the city of *or* a farm known as , in , *or*, a piece of land lying, &c.]

2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, *or* farm, *or* land].

3. That he has not paid the same.

[*Demand of judgment.*]

NOTE.—Where there has been no actual conveyance say in § 1 "sold to the defendant the house, &c., and placed him in possession of the same."]

No. 15.

FOR THE PURCHASE-MONEY OF IMMOVABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No. in the town of , *or* one hundred bighás of land in , bounded by the East Indian railroad, and by other lands of the plaintiff] for rupees.

2. That on the day of 18 , at , the plaintiff tendered [*or* was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[*Demand of judgment.*]

No. 16.

FOR SERVICES AT A FIXED PRICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at the salary of rupees per year].

2. That from the [said day] until the day of 18 , the plaintiff [served the defendant as his clerk].

3. That the defendant has not paid the said salary.

[*Demand of judgment.*]

No. 17

FOR SERVICES AT A REASONABLE PRICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , 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. That the said services were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].

2. That the defendant promised to pay rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request ; but no express agreement was made as to the price to be paid for such work and materials.

2. That the said work and materials were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 20.

FOR RENT RESERVED IN A LEASE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into a covenant with the plaintiff, under their hands, a copy of which is hereto annexed.

[*Or state the substance of the agreement.*]

2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[*Demand of judgment.*]

ANOTHER FORM.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years, to hold from the day of 187 at rupees a year, payable quarterly.

2. That of such rent quarters are due and unpaid.

[*Demand of judgment.*]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant hired from the plaintiff [the house No. , street], at the rent of rupees payable on the first day of .

2. That the defendant occupied the said premises from the day of 18 to the day of 18 .

3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[*Demand of judgment.*]

No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

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 18 , until the day of 18 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. That the defendant has not paid the same.

4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house [No. , street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.

2. That in consideration thereof, the defendant promised to pay [*or* that no agreement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth] the sum of rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 24.

FOR FREIGHT OF GOODS.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff transported in [*his barge, or otherwise*] [one thousand barrels of flour, *or* sundry goods], from to , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon. [*Or*, that no agreement was made as to payment for such transportation, but that such transportation was reasonably worth rupees.]

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 25.

FOR PASSAGE MONEY.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the] from to at his request.

2. That the defendant promised to pay the plaintiff rupees therefor. [*Or* that no agreement was made as to the price of the said passage; but that the said passage was reasonably worth rupees.]

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 26.

ON AN AWARD.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators [*or*, entered into an agreement, a copy of which is hereto annexed].

2. That on the day of 18 , at , the said arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. That the defendant has not paid same.

[*Demand of judgment.*]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

No. 27.

ON A FOREIGN JUDGMENT.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , 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. That the defendant has not paid the same.

Demand of judgment.

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day of 187 , the sum of rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[*Demand of judgment.*]

No. 29.

PAYEE AGAINST MAKER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant by his promissory note now overdue, promised to pay to the plaintiff rupees [days] after date.

2. That he has not paid the same [except rupees, paid on the day of 18].

[*Demand of judgment*].

[NOTE.—Where the note is payable after notice, for paras. 1 and 2 substitute—

1. That on the day of at the defendant by his promissory note promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

Where the notice is payable at a particular place, say—

1.—That on the day of 187 at the defendant by his promissory note now overdue promised to pay to the plaintiff [at Messrs. A. and Co., Madras,] rupees months after date.

2.—That the said note was duly presented for payment [at Messrs. A. and Co.] aforesaid, but has not been paid.

No. 30.

FIRST INDORSEE AGAINST MAKER.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* [*or* to *E. F.* or order] rupees [days after date.]

2. That the said *E. F.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. [*As in the preceding form.*]

2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [*or*, and others] transferred to the plaintiff.

[*Demand of judgment.*]

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That *E. F.* on the day of 18 , at , by his promissory note now overdue promised to pay to the defendant or order rupees months after date.

2. That the defendant indorsed the same to the plaintiff.

3. That on the day of 18 the same was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.

That he has not paid the same.

[*Demand of judgment.*]

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

IN THE COURT OF AT .

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 , at , to the order of the defendant, for the sum of rupees [payable days after date].

2. That the same was by the indorsement of the said *E. F.* [and others] transferred to the plaintiff. [*Or*, that the said *E. F.* indorsed the same to the plaintiff.]

3, 4 *and* 5. [*Same as* 2, 3 *and* 4 *of the preceding form.*

[*Demand of judgment.*]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant.

2, 3 *and* 4. [*As in No.* 33.]

[*Demand of judgment.*]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 *and* 4. [*As in No.* 33.]

[*Demand of judgment.*]

No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, FIRST AND SECOND INDORSEE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of
E. F. of
and
G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.* rupees [months after date.]

2. That the said *E. F.* indorsed the same to the defendant *G. H.*, who indorsed it to the plaintiff.

3. That on the day of 18 , the same was presented [*or state facts excusing presentment*] to the said *C. D.* for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had noticed thereof.

5. That they have not paid the same.

[*Demand of judgment.*]

No. 37.

DRAWER AGAINST ACCEPTOR.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , by his bill of exchange now overdue, the plaintiff required the defendant to pay to him rupees [days after date, *or* sight thereof].

2. That the defendant accepted the said bill. [*If the bill is payble at a certain time after sight the date of acceptance should be stated, otherwise it is not necessary.*]

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE.—Where the bill is payable to a third party, for paras. 1, 2, 3, say—]

1. That on &c., at &c., by his bill of exchange now overdue directed to the defendant the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.

2. That the plaintiff delivered the said bill to the said *E. F.* on

3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay the plaintiff rupees after sight thereof.

2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue , made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.

2. That the said *G. H.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. [*As in the preceding form, to the end of Art.* 1.]
2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.* required the said *E. F.* to pay to the plaintiff rupees [days after sight].
2. That on the day of 18 , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[*Demand of judgment.*]

[NOTE.—Notice of dishonour by non-acceptance must be given at once.]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to the plaintiff a bill of exchange now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [*or* after date, *or* at sight] thereof, [and accepted by the said *G. H.* on the day of 18 .]
2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same

[*Demand of judgment.*]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue made [*or* purporting to have been made] by one *G. H.*, on the day of 18 , at , requiring one *I. J.* to pay to the order of the defendant rupees days after sight thereof [*or otherwise*], and accepted by the said *I. J.* on the day of 18 . [*This clause may be omitted, if not according to the fact.*]

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.

3. That on the day of 18 , the same was presented to the said *I. J.* for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to plaintiff a bill of exchange now overdue made [*or* purporting to have been made to] by one *E. F.*, on the day of 18 , at requiring one *G. H.* to pay the order of *I. J.* rupees days after sight thereof [*or otherwise*] [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff states as follows:—

1. That a bill of exchange, now overdue made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.*, to pay to the order of one *I. J.* rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of
E. F. of
G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, *C. D.*, by his bill of exchange now overdue, directed to the defendant *E. F.* required the said *E. F.* to pay to the order of the defendant *G. H.* rupees [days after sight thereof].

2. That on the day of 18 , the said *E. F.* accepted the same.

3. That the said *G. H.* indorsed the same to the plaintiff.

4. That on the day of 18 , the same was presented to the said *E. F.* for payment and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment.*]

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant by his bill of exchange, required one *E. F.* to pay to the plaintiff in [London] pounds sterling, [sixty days] after sight thereof.

2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant was rupees.]

Wherefore the plaintiff demands judgment against the defendant for rupees with [ten per centum] compensation and interest from the day of 18 .

No. 48.

PAYEE AGAINST ACCEPTOR.

IN THE COURT OF AT .

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one *E. F.*, by his bill of exchange now overdue, directed to the defendant to pay to the plaintiff rupees after date [*or* days after sight] thereof.

2. That on the day of 18 , the defendant accepted the said bill.

3. That he has not paid the same.

[*Demand of judgment.*]

[NOTE.—This form omits to state the delivery of the bill to the plaintiff or his title to sue.—See *Churchill* v. *Gardners*, 7 T. R. 596.

No. 49.

ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of
against
C. D. of
and *E. F.* of

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or*, had an interest in] the ship at the time of its loss, as hereafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [*or*, which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [*or*, whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during its next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].

3. That the said vessel, while proceeding on the voyage mentioned in the said policy, was, on the day of 18 , totally lost by the perils of the sea [*or otherwise*].

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

ON CARGO, LOST BY FIRE :—VALUED POLICY.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [*or*, had an interest in] [one hundred bales of cotton] on board the ship at the time of its loss as hereafter mentioned.

2. That on the day of 18 , at , the defendant, in consideration of rupees, which the plaintiff then paid [*or*, promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed ; [*or*, whereby it promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should exceed per centum of the whole value of the goods.]

3. That on the day of 18, at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire.

4 *and* 5. [*As in paragraphs 5 and 6 of the preceding Form.*]

[*Demand of judgment.*]

No. 51.

ON FREIGHT :—VALUED POLICY.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff had an interest in the freight to be earned by the ship [ ] on her voyage from to , at the time of her loss as hereafter mentioned, and that a large quantity of goods were shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to it paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That the said vessel, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said vessel, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 *and* 6. [*As in Form No.* 50.]

[*Demand of judgment.*]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of [*or*, had an interest in] [one hundred bales of cotton] shipped on board a vessel called the *Y. Z.*, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed, [*or state its tenor, as before*].

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1 *and* 2. [*As in the preceding Form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 *and* 5. [*As in paragraphs* 5 *and* 6 *of the preceding Form.*]

[*Demand of judgment.*]

No. 54.

ON A FIRE INSURANCE POLICY.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff [was the owner of, *or*] had an interest in a [dwelling-house, known as No. , street, in the city of ,] at the time of its destruction [*or*, injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to it paid], the defendant executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed ; [*or states its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [*or*, greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

No. 55.

AGAINST SURETIES FOR PAYMENT OF RENT.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.* hired from the plaintiff, for the term of years, the [house No. , street], at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , 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. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

B. PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

For Breach of Agreement to convey Land.

In the Court of at

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or* That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of ten thousand rupees payable as hereafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a good and sufficient conveyance of [the house No. street, in the city of free from all incumbrances; and the plaintiff agreed to pay ten thousand rupees for the same on delivery thereof].

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant, and tendered rupees to the defendant [*or*, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. That on the day of 18 , the plaintiff again demanded such conveyance [*or* that the defendant refused to execute the same].

4. That the defendant has not executed any conveyance of the said property to the plaintiff [*or*, that there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, *or any other defect of title*].

5. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

Wherefore the plaintiff prays judgment for rupees compensation.

No. 57.

For Breach of Agreement to purchase Land.

In the Court of at

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy in hereto annexed.

[*Or*, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bighás of land in the village of , , for rupees].

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient deed of conveyance of the same [*or*, was ready and willing, and offered to convey the same to the defendant by a sufficient deed], on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 58.

ANOTHER FORM.

FOR NOT COMPLETING A PURCHASE OF IMMOVABLE PROPERTY.

IN THE COURT OF , AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That, by an agreement dated the day of 187 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say)—

(*a*) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 187 , on which day the said purchase should be completed.

(*b*) That the plaintiff should deduce and make a good title to the said premises on or before the day of 187 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[*Demand of judgment.*]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of 18 , [and that the plaintiff should therefor rupees on delivery.

2. That on the [said] day, the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , 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. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, 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 had notice.

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*Demand of judgment.*]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. [*As in the preceding Form.*]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[*Demand of judgment.*]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at [an annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year.]

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 offered so to do.]

3. That the defendant [entered upon the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18 , he] refused to serve the plaintiff as aforesaid.

[*Demand of judgment.*]

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed :

[*Or state the tenor of the contract.*]

[2. That the plaintiff duly performed all the conditions of the said agreement on his part].

3. That the defendant built the house referred to in the said agreement in a bad and unworkmanlike manner.

[*Demand of judgment.*]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant entered into an agreement, under his hand and seal,* a copy of which is also hereto annexed :

[*Or state the tenor of these covenants*].

2. That after the making of the said agreement the plaintiff received the said [*apprentice*] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said [*apprentice*] wilfully absented himself from the service of the plaintiff, and continues so to do.

[*Demand of judgment.*]

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

IN THE COURT OF AT

Civil Regular No .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the *A.* defendant entered into an agreement with the plaintiff's father, *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of , *or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment.*]

[*Demand of judgment*].

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* The form given in Act XIX. of 1850 requires the seal of the father or guardian.

No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff, that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, 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* That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.]

[*Or*, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is annexed].

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[*Demand of judgment.*]

No. 67.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. street,] for the term of years, covenanting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of during the said term, one *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. That 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.

[*Demand of judgment.*]

No. 68.

FOR BREACH OF WARRANT OF MOVABLES.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which would otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

No. 69.

ON AN AGREEMENT OF INDEMNITY.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant, being partners in trade under the firm of *A. B.* and *C. D.*, dissolved the said 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 said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at , upon a debt due from the said firm to the said *E. F.*, and on the day of 18] the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

No. 70.

BY OWNER AGAINST FREIGHT OR FOR NOT LOADING.

IN THE COURT OF TA

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at , on the day of , 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day].

2. That at the time fixed by the said agreement the plaintiff was ready and willing and offered to receive [the said merchandise, *or*, the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

IN THE COURT OF AT

Civil Regular No. .
A. B., of
against
C. D., of

A. B., the above-named plaintiff, states as follows:—

That on the day of 18 , at , the defendant entered upon certain land of the plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[*Demand of judgment.*]

No. 72.

FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

IN THE COURT OF AT

Civil Regular No. .
A. B., of
against
C. D., of

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[*Demand of judgment.*]

No. 73.

FOR TRESPASS ON MOVABLES.

IN THE COURT OF AT

Civil Regular No. .
A. B., of
against
C. D., of

A. B., the above-named plaintiff, states as follows:—

That on the day of 18 , at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [*or* seized and took the plaintiff's goods, that is to say, iron, rice and household furniture [*or as the case may be*], and carried away the same and disposed of them to his own use]:

or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks, during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [*otherwise state the injury according to the facts*].

[*Demand of judgment.*]

No. 74.

FOR THE CONVERSION OF MOVABLE PROPERTY.

IN THE COURT OF AT

Civil Regular No. .

A. B., of

against

C. D., of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff was in possession of certain goods described in the schedule hereto annexed [*or* of one thousand barrels of flour].

2. That on that day at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[*Demand of judgment.*]

[*The Schedule.*]

No. 75.

AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

IN THE COURT OF AT

Civil Regular No. .

A. B., of

against

C. D., of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees [*or*, rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff, on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour.]

3. That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [*or*, the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to *E. F.*, and the same are lost to the plaintiff.

[*Demand of judgment.*]

No. 76.

FOR PROCURING PROPERTY BY FRAUD.

IN THE COURT OF AT

Civil Regular No. .

A. B., of

against

C. D., of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , 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. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [*or state the particular falsehoods*], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or, if the goods were not delivered*] That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees.

[*Demand of judgment.*]

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant represented to the plaintiff, that one *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. That the plaintiff was thereby induced to sell to the said *E. F.* [rice] of the value of rupees [on months' credit].

3. That 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. That the said *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 by reason of the premises.

[*Demand of judgment.*]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same so flow or run without being fouled or polluted.

2. That on the day of 18 , the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said 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 said well and water.

[*Demand of judgment.*]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

IN THE COURT OF AT

Civil Regular No. .

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in

2. That ever since the day of ,18 , the defendant has wrongfully caused to issue and proceed from certain smelting works carried on by the defendant large quantities of offensive, poisonous and unwholesome smoke and other vapours and noxious matter which spread and diffused themselves over and upon the said lands, and impregnated and corrupted the air, and settled and deposited on the soil and surface of the said lands.

3. That thereby the trees, hedges, and herbage of crops the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the said lands became unhealthy and diseased, and divers of them were poisoned and died.

4. That by reason of the premises the plaintiff was unable to depasture the said lands with cattle and sheep, as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock thereform, and has been prevented from having so beneficial and healthy a use and occupation by the said lands as he otherwise would have had.

[*Demand of judgment.*]

No. 80.

FOR OBSTRUCTING A WAY.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at the time hereafter mentioned was, possessed of [a house in the town of .]

2. That he was accustomed to pass [with vehicles, *or*, on foot] along a certain way leading from his said house to [the highway].

3. That on the day of , 18 , the defendant obstructed the said way, so that the plaintiff could not pass [with vehicles, *or*, on foot, *or*, in any manner] along the said way [and has ever since obstructed the same].

4. [*State special damage, if any.*]

[*Demand of judgment.*]

ANOTHER FORM.

1. That 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. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*Demand of judgment.*]

No. 81.

FOR DIVERTING A WATER-COURSE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That 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. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the day of 18 , the defendant, by cutting the bank of the said stream, diverted the water thereof so that less water ran into the plaintiff's mill.

4. That 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.

[*Demand of judgment.*]

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

1. That the plaintiff is and was at the time hereinafter mentioned possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by obstructing and diverting the said stream.

[*Demand of judgment.*]

No. 83.

FOR WASTE BY A LESSEE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant hired from him the [house No. , street] for the term of

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors ; *or otherwise specify the injuries as far as possible.*

Wherefore, the plaintiff demands judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

IN THE COURT OF AT

Civil Regular No. ,

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

That on the day of 18 , at , the defendant assaulted and beat him.

Wherefore, the plaintiff demands judgment for rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assaulted and beat the plaintiff, until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage as the case may be*].

[*Demand of judgment.*]

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assaulted the plaintiff and imprisoned him for days [*or* hours] ; [*state special damage, if any, thus :*—

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be*].

[*Demand of judgment.*]

No. 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

The Railway Company.

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and .

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That 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 defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., *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.

[*Demand of judgment.*]

[*Or thus*:—2. That on that day the defendants by their servants so negligently and unskilfully 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 &c., *as in* § 3.]

No. 88.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [*or*, in a letter addressed to *E. F.*], the following words, concerning the plaintiff:

[*Set forth the words used.*]

2. That the said publication was false and malicious.

[*Demand of judgment.*]

No. 89.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of , 18 a merchant, doing business in the city of

2. That on the day of 18 , at , the defendant published in a newspaper, called the [*or*, in a letter addressed to *E. F.*, *or otherwise show how published*], the following words concerning the plaintiff:

["*A. B.*, of this city, has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address."]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them.]

4. That the said publication was false and malacious.

[*Demand of judgment.*]

NOTE.—If the lible was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—"Which said words, being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published, that it to say [*here set out a literal translation of the libel in the language of the Court*].

No. 90.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

IN THE COURT AT

Civil Regular No.
A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously spoke, in the hearing of *E. F.* [*or* sundry persons], the following words, concerning the plaintiff: ["He is a thief"].

2 That in consequence of the said words, the plaintiff lost his situation as in the employ of .

[*Demand of judgment.*]

No. 91.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

IN THE COURT OF AT

Civil Regular No.
A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously said to one *E. F.*, concerning the plaintiff: ["He is a young man of remarkably easy conscience."]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant by the said words that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk.]

[*Demand of judgment.*]

No. 92.

FOR MALICIOUS PROSECUTION.

IN THE COURT OF AT

Civil Regular No.
A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant obtained a warrant of arrest from [a police magistrate of the said city, *or, as the case may be,*] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days, *or*, hours, and gave bail in the sum of rupees to obtain his release.]

2. That in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or*, that in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*, *or* that by reason of the premises 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.

[*Demand of judgment.*]

No. 93.

FOR SLANDER OF TITLE.

IN THE COURT OF AT
Civil Regular No.
A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff was the absolute owner of [the house No. , street , *or* an estate in the town of , bounded by land of *E. F.*, *G. H.*, and *I. J.*]

2. That on that day, at , the defendant spoke, in the presence of *K. L.* [and other persons], the following words concerning the plaintiff and his said property ["*A. B.* does not own that house [or estate]. He has sold it to me, and I have a good title to it"].

3. That the said words were false and malicious.

4. That by reason of the said words, the said *K. L.*, who was then about to purchase the said property from the plaintiff, refused to do so. [*Or otherwise show special damage*].

[*Demand of judgment.*]

[NOTE.—This suit will not lie unless special damage has been sustained.]

D. PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVABLE PROPERTY.

IN THE COURT OF AT
Civil Regular No.
A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That he is the absolute owner of the [estate, *or* the share of the estate called , situate in the district of , the Government revenue of which is rupees , and the estimated value rupees , *or* of the house No. , street, in the town of Calcutta, the estimated value of which is rupees.].

2. That the defendant withholds the possession thereof from the plaintiff.

Wherefore, the plaintiff demands judgment :

(1). For the possession of the said premises;

(2). For rupees compensation for withholding the same.

No. 95.

BY THE TENANT.

IN THE COURT OF AT
Civil Regular No.
A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta, , bounded as follows :], the estimated value of which is rupees .

2. That on the day of 18 , the said *E. F.* let the said premises to the plaintiff for years, from .

3. That the defendant withholds the possession thereof from the plaintiff.

[*Demand of judgment.*]

No. 96.

FOR MOVABLE PROPERTY WRONGFULLY TAKEN.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [or, was possessed of], one hundred barrels of flour, the estimated value of which is rupees .

2. That on that day, at , the defendant took the same.

Wherefore, the plaintiff prays judgment:

(1). For the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2). For rupees compensation for the detention thereof.

No. 97.

FOR MOVABLES WRONGFULLY DETAINED.

IN THE COURT of AT .

Civil Regular No. .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned iu the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees .

2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

Wherefore, the plaintiff demands judgment:

(1). For the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2). For rupees compensation for the detention thereof.

The schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of

against

C. D. of

A. B., the abvoe-named plaintiff, states as follows :—

1. That on the day of 18 , at , 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. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [*one hundred boxes of tea*], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C. D.* to be so. [*Or* That at the time of making the said representations, the said *C. D.* was insolvent, and knew himself to be so.]

4. That the said *C. D.* afterwards transferred the said goods to the defendant, *E. F.*

Wherefore, the plaintiff demands judgment:

(1). For the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2). For rupees compensation for the detention thereof.

E. PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [*ten bighás*].

2. That 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 a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [*five bighás*].

Wherefore the plaintiff demands judgment:

(1). For rupees, with interest from the day of 18 ;

(2). That the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUCNTION RESTRAINING WASTE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is the absolute owner of [*describe the property*].

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That 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.

Wherefore the plaintiff demands judgment, that the defendant be restrained by injuction from committing or permitting any further waste on the said premises. [*Pecuniary compensation might also be demanded.*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , street, Calcutta].

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. That on the day of 18 , the defendant erected upon his said lot 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. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].

Wherefore the plaintiff demands judgment, that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

[*As in No.* 80.]

Wherefore, the plaintiff demands judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVABLE PROPERTY THREATENED WITH DESTRUCTION AND FOR AN INJUNCTION.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, 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 re-placed by money*].

2. That on the day of 18 , he deposited the same for safe-keeping with the defendant.

3. That on the day of 18 , he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.

4. That 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. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the said [painting].

Wherefore, the plaintiff demands judgment.

(1). That the defendant be restrained by injunction from disposing of, injuring, or concealing the said [painting].

(2). That he return the same to the plaintiff.

[NOTE.—See *Wood* v. *Rowcliffe* 3 Hare 309. And see 2 Giff. 64.]

No. 104.

INTERPLEADER.

IN THE COURT OF AT .

Civil Regular No.

A. B. of

against

C. D. of

and

E. F. of

A. B., the above-named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned, one *G. H.* deposited with the plaintiff [*describe the property*] [for safe keeping].

2. That the defendant, *C. D.*, claims the same [under an alleged assignment thereof to him from the said *G. H.*]

3. That the defendant, *E. F.*, also claims the same [under an order of the said *G. H.* transferring the same to him].

4.—That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

Wherefore the plaintiff demands judgment:

(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. 105.

ADMINISTRATION BY CREDITOR.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

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. The said *E. F.* made his Will dated the day of , and thereof appointed *C. D.* executor [*or* devised his estate in trust, &c., *or* died intestate, *as the case may be*].

3. The said Will was proved by the said *C. D.* [*or* letters of administration were granted, *&c.*]

4. The defendant has possessed himself of the movable [and immovable *or* the proceeds of the immovable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the day of

6. The plaintiff prays that an account may be taken of the movable [and immovable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEES.

IN THE COURT OF AT

Civil Regular No. ,

A. B. of

against

C. D. of

[*Alter from* 103 *thus:*—]

[*Omit paragraph* 1 *and commence paragraph* 2] *E. F.*, late of , duly made his last Will dated the day of and thereof appointed *C. D.* executor, "and by such Will bequeathed to the plaintiff [*here state the specific legacy*]."

For paragraph 4 *substitute*—

The defendant is in possession of the movable property of the said *E. F.* and *inter alia*, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 6 *substitute*—

The plaintiff prays that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEES.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

[*Alter Form* 103 *thus* :—]

[*Omit paragraph* 1 *and substitute for paragraph* 2] *E. F.*, late of , duly made his last Will dated the day of , and thereof appointed *C. D.* executor, and by such Will bequeathed to the plaintiff a legacy of Rs.

In paragraph 4 *substitute* "legacy" *for* "debt."

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF . AT .

Civil Regular No. .

A. B. of ... ... *Plaintiff,*

against

C. D. of the *or* one of the beneficiaries, ... *Defendant.*

A. B., the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of the said *E. F.* and *G. H.*, the father and mother of the defendant [*or* an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*]

2. The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the movable and immovable property conveyed [*or* assigned] by the before-mentioned deed.

3. The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said *or* part of the said immovable property, *or* movable, *or* the proceeds of the sale of, or part of the said movable 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 said trust estate may be administered in the Court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *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. 109.

FORECLOSURE.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. By an instrument of mortgage bearing date on or about the day of 18 , a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed [*or* assigned] by the defendant to him the plaintiff, his heirs [*or* executors, administrators,] and assigns, for securing the principal sum of Rs. together with interest thereon after the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays that the Court will order the defendant to pay him the said sum of Rs. with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the equity of redemption of the said mortgaged premises may be fore-closed, or that the said premises may be sold, and the proceeds applied in and towards the payment of the said principal, interest, and costs; and he prays that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

IN THE COURT OF AT .

Civil Regular No. .

A. B. of

against

C. D. of

[*Alter Form 107 thus* :—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2 substitute—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs. , which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3 substitute—

The plaintiff prays that he may redeem the said premises, and that the defendant may be ordered to re-convey [*or* re-assign] the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance [*or* assignment], and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage :

No. 111.

SPECIFIC PERFORMANCE. (No. 1.)

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. By an agreement dated the day of and signed by the above-named defendant *C. D.*, he, the said *C. D.*, contracted to buy of [*or* sell to] him certain immovable property, therein described and referred to, for the sum of Rs. .

2. He has applied to the said *C. D.* specifically to perfom the said agreement on his part, but that he has not done so.

3. The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part, of which the said *C. D.* has had notice.

4. Wherefore the plaintiff demands judgment that the Court will order the said *A. B.* specifically to perform the said agreement, and to do all acts necessary to put the said *A. B.* in full possession of the said property [*or* to accept a conveyance and possession of the said property] and to pay the costs of the suit.

N.B.—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled, such as that the plaintiff signed it by mistake, under distress, or by the fraud of the defendant, and alter the prayer according to the relief sought.]

No. 112.

SPECIFIC PERFORMANCE. (No. 2).

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day 18 , the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [*Or*, that the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

Wherefore, the plaintiff demands judgment :

(1). That the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement*] ;

(2). For rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows :—

1. He and the said *C. D.*, the defendant, have been for the space of years [*or* months] last past carrying on business together at within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively, [*or* under a certain deed sealed and executed by them respectively, *or* under a verbal agreement between them, the said Plaintiff and Defendant.]

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [deed, *or* agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs may be divided between the plaintiff and defendant, according to the terms of the said articles [deed *or* agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by of

Pleader for the plaintiff, *or* by

[*N.B.—In suits for winding up of any partnership, omit the prayer for dissolution ; but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.*]

F. MISCELLANEOUS.

No. 114.

Section 57 of the Code of Civil Procedure.

COURT of the of holden at

REGISTER OF CIVIL SUITS in the year 18 .

Date of presentation of plaint.	No. of Suit.	PLAINTIFF.			DEFENDANT.			CLAIM.			APPEARANCE.			JUDGMENT.			APPEAL.		EXECUTION.				RETURN OF EXECUTION.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	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 Appeal.	Judgment in appeal.	Date of Application.	Date of Order.	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.

No. 115.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 62 and 65 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of

against

C. D. of

To dwelling at

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court, in person or by a duly authorized Pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your Pleader , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 81 .

L. S.

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have subpœnas 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 at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into the Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

NOTE.—If written statements are required, say you are (*or* such a party is, as the case may be) required to put in a written statement by the day of .

No. 116.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 62 and 65 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No *of* 18 .

A. B. of

against

C. D. of

To dwelling at

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a duly authorized Pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the issues will be settled in your absence; and you will bring with you, or send by your Pleader , which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

L. S.

Judge.

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have subpœnas 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 at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with costs of the suit, to avoid the summary execution of the decree, which may be against your person or property or both, if necessary.

NOTE.—*If written statements are required, say,* you are (or such a party is, as the case may be, required to put in a written statement by the day of .

No. 117.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

NO. OF SUIT.

IN THE COURT OF AT

Plaintiff.
Defendant.

To (*Name, description, and address.*)

Whereas [*here enter the name, description, and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the Register*]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [*if not specially required to appear in person, state—"in person or by a pleader of the Court duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"*] to answer the above-named plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here; "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"*]: and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

No. 118.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

Section 81 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A.B. of
against
C.D. of

The *day of* 18 .

WHEREAS it is stated in the plaint that defendant in the above suit at present residing in , but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons returnable on the day of 18 be forwarded for service on the said defendant, to the Court of with a duplicate of this proceeding.

L. S.

Judge.

No. 119.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

Section 81 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Miscellaneous No. *of* 18 .
The *day of* 18 .

A. B. of
against
C. D. of

Read proceeding from the forwarding for service on in Civil No. of that Court.

Read bailiff's endorsement on the back of the process stating that the
and proof of the above having been duly taken by me on the [oath *or*] affirmation of
and it is ordered that the be returned to the
with a copy of this proceeding.

L. S.

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. 120.

DEFENDANT'S STATEMENT.

Section 103 of the Code of Civil Procedure.

IN THE COURT OF AT
A.B. of
against
C.D. of

I, the undersigned defendant [*or* one of the defendants], disclaim all interest under the will of the said *E. F.* in the plaint named [*or* as heir-at-law of, *or* as next-of-kin, *or* one of the next-of-kin, of *E.F.* deceased, in the said plaint named].

Or I the undersigned defendant state, that I admit [*or* deny] [*here repeat in the language of the plaint the statements admitted or denied.*]

Or I the undersigned defendant submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [*or* that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, *or* that it appears by the said plaint that *G. H.* should have been a joint plaintiff with the said *A.B.* in the said suit, *or as the case may be*].

Or that the plaintiff has conveyed [*or* assigned] his interest in the said mortgage [*or* equity of redemption] to one *I.J.* [*or* that I have conveyed or assigned to *H.L.* by way of further charge for securing the sum of Rs. , the equity of redemption in the property sought by the suit to be foreclosed.]

Or that since the dissolution of the partnership the plaintiff has executed an instrument whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading, [*or as the case may be*].

(Sd.) *C.D.*, Defendant.

No. 121.

SUBPŒNA.

Section 141 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Regular No. *of* 18 .
A.B. of
against
C. D. of

To

WHEREAS your attendance is required to on behalf of the in the above cause, you are hereby required (personally to appear before this Court) on the day of 18 , at the hour of A.M. (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 do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 149.*

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.*

Notice—(2). *If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.*

GIVEN under my hand and the seal of the Court, this day of 1 .

L. S.

Judge.

* NOTE.—if the witness be a party to the suit, section 151.

No. 122.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Section 144 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff.
Defendant.

To (*Name, description, and address.*)

You are hereby summoned to appear in this Court in person on the day of at in the forenoon, to give evidence on behalf of the plaintiff (*or* the defendant) in the above-mentioned suit, and to produce (*here describe with convenient certainty any document the production of which may be required. If the Summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*): and you are not to depart thence without the leave of the Court.

No. 123.

NOTICE TO A PARTY TO THE SUIT TO SHOW CAUSE WHY HE SHOULD NOT ATTEND AND GIVE EVIDENCE.

Section 159 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

To

WHEREAS has applied to the Court for an order requiring your attendance, to be examined as a witness on behalf: take notice that the day of 18 is fixed for you to show cause why you should not attend and give evidence.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 124.

SIMPLE MONEY-DECREE.

Sections 185 and 186 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

Claim for

THIS cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the the sum of Rs. , with interest thereon at the rate of per cent. per from to the date of realization of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

Costs of Suit.

PLAINTIFF.	Rs.	a.	p.	DEFENDANT.	Rs.	a.	a.
1. Stamp for plaint				Stamp for power			
2. Do. for power				Do. petition			
3. Do. exhibits				Pleader's fee			
4. Pleader's fees on Rs. ...				Subsistence for witnesses ...			
5. Translation fee				Service of process			
6. Subsistence for witness for attendance				Translation fee			
7. Commissioner's fee... ...				Commissioner's fee			
8. Service of process							
9. &c.							
TOTAL ...				TOTAL ...			

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 125.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

Section 186 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

IT is ordered that it be referred to the Registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or* lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar do certify to the Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs: And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the Registrar shall have presented his certificate; it is ordered that the plaintiff do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and do deliver up to the Registrar all deeds and writings in his custody or power relating thereto, and that upon such reconveyance being made, and deeds and writings being delivered up, the Registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into Court such principal, interest, and costs as aforesaid, by the time aforesaid, then it is ordered that the said mortgage premises [*or* the premises subject to the said equitable mortgagee *or* lien] be sold with the approbation of the Registrar: And it is ordered that the money to arise by such sale be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

No. 126.

FINAL DECREE FOR FORECLOSURE.

Section 186 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

WHEREAS it appears to the Court that the defendant has not paid into Court the sum which was on the day of last certified by the Registrar to be due to the Plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of .

It is ordered that the Defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to, the said mortgaged premises.

No. 127.

PRELIMINARY ORDER—ADMINISTRATION SUIT.

Section 193 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

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 suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

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 Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, devisees, 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.*]

3. An account of the funeral and testamentary expenses.

4. 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.

5. An inquiry what part (if any) of the moveable property of the deceased are outstanding and undisposed of.

6. 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 to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell, any part of the movable property of the deceased, that the same be sold accordingly.

8. And that Mr. *E. F.* be Receiver in the suit [*or* proceeding], and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the Registrar [and shall give security by bond for the due performance or his duties to the amount of Rs.]

9. And it is further ordered, that if the movable 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 immovable property the deceased was seised of or entitled to at the time of his death.

(*b*) an inquiry what are the incumbrances (if any) affecting the immovable 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.

10. And that the immovable 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.

11. And it is ordered, that *G. H.* shall have the conduct of the sale of the immovable property and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the Registrar 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 Registrar to give the most useful publicity to such inquiries.

13. 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 Registrar 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 .

14. And lastly it is ordered, that this suit [*or* matter] stand adjourned for making a final decree to the day of .

[*Such part only of this order is to be used as is applicable to the particular case*].

No. 128.

FINAL DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE.

Section 193 of the Code of Civil Procedure.

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 centum per annum, from the day of to the day of amounting together to the sum of Rs.

2. Let the Registrar 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], 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 Registrar's certificate, 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 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.

DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

1. Decalre 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 odered, that the defendant do within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar 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.

FINAL DECREE IN AN ADMINISTRATION SUIT BY NEXT OF KIN.

1. Let the Registrar of the said Court tax the costs of the plaintiffs and defendant in this suit, and let the amount of the said plaintiffs' costs, when so taxed, be paid by the defendant to the plaintiffs 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 Registrar, and let the defendant retain for her own use out of such sum her costs when taxed.

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 Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.* and *C.*, 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 other 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 Registrar 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. 129.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 194 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

It is declared that the partnership in the plaint mentioned between the Plaintiff and Defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette, &c.*

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 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 good-will 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 Registrar 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 are 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 Registrar 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

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No. 130

PARTNERSHIP.

Final Decree.

Section 194 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No.

A. B. of
against
C. D. of

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 Registrar's certificate amounting in the whole to Rs.

2. In payment of the costs all parties in this suit, amounting to Rs.

[*These costs must be ascertained before the decree is drawn up.*]

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.

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. 136.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 257 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .

A. B. of
against
C. D. of

To

WHEREAS
has failed to satisfy a decree passed against on the day of
18 , in Civil Regular No. of 18 , in favour of
for Rs. : it is ordered that the defendant, be and 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.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 137.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 257 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .

A. B. of
against
C. D. of

To

defendant, and to
, Manager of
Company.

WHEREAS has failed
to satisfy a decree passed against
on the day of 18 , in Civil Regular No. of 18
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 Company, namely,
or from receiving payment of any dividends thereof; and you
, the Manager of the said Company, 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 18 .

L. S.

Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 262 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .

A. B. of
against
C. D. of

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 18 , in Civil Regular Suit No. of 18 , 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 alienating 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 18 .

SCHEDULE.

L. S.

Judge.

No. 139.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 261 and 487 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

To

SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure 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 account, &c.)*, 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,

L. S.

Dated day of 18 . *Judge.*

No. 140.

ORDER FOR PAYMENT TO THE PLAINTIFF, &c., OF MONEY, &c., IN THE HANDS OF A THIRD PARTY.

Section 266 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .

A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Regular No. of , passed on the day of of 18 , in favour of for Rs. it is ordered that the property so attached, consisting of Rs. in money, and Rs. in Bank Notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said , to , and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof to satisfy the said decree, shall be paid over to the said , and the remainder, if any, shall be paid to you, the said

GIVEN under may hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 141.

APPOINTMENT OF A MANAGER.

Section 269 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

To.

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby appointed Manager of the said property under section 259 of the Code of Civil Procedure, with full powers under the provisions of that section.

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 18 .

L. S.

Judge.

No. 142.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND ON SECURITIES BEING GIVEN.

Section 271 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

To

Collector of

SIR,

In answer to your communication No. , dated , representing that the sale in execution of decree in this suit of land, lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you that you are authorized, on security to the amount of Rs. decreed to the in the above suit, being given to your satisfaction, to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,

SIR,

Your obedient Servant,

L. S.

Judge.

No. 143.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 274 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .
A. B., of
against
C. D., of

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 right, title, and interest of in and to the property attached under a Warrant from this Court, dated the of 18 in execution of a decree in favour of in suit No. of 18 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 18 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 18 .

L. S.

Judge.

* This prolcamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered; you shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein.

No. 144.

ORDER CONFIRMING SALE OF LAND, &c.

Section 292 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B., of
against
C. D., of

WHEREAS the right, title, and interest of in the following land (or immovable property) was on the day of 18 sold by the Bailiff of this Court in execution of the decree in this suit; and whereas thirty days have elapsed and no application has been made (*or* objection allowed) to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

SCHEDULE.

L. S.

Judge.

No. 145.

CERTIFICATE OF SALE OF LAND.

Section 294 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B., of
against
C. D., of

THIS is to certify that has been declared the purchaser at a sale by public auction on the day of 18 of the right, title, and interest of in in execution of the decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION.

Section 294 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18

A. B., of
against
C. D., of

To

WHEREAS
has been the purchaser at a sale by auction in execution of the decree in the above suit of now in your possession, you are hereby prohibited from delivering possession of the said to any persons except the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 147.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 298 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18

A. B., of

against

C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at a sale in execution of decree in Civil Regular No. of 18 , and whereas such land is in the possession of , you are hereby ordered to put the said , the certified purchaser, as aforesaid, into possession of the said and if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 148.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18

A. B., of

against

C. D., of

To

and to

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain debt due from you to you , that is to say , it is ordered that our be and you are hereby prohibited from receiving, and you my 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

L. S.

Judge.

No. 149.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B., of

against

C. D., of

To

and Manager of company

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain shares in the above Company, 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 share to any person except the said the purchaser aforesaid, or from receiving any dividends thereon; and you , Manager of the said Company, 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 18 .

L. S.

Judge.

No. 150.

WARRANT OF ARREST IN EXECUTION.

IN THE COURT OF AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .

A. B., of
against
C. D., of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in Regular No. 18 , dated 18 , to pay to the plaintiff the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and unless the said defendant 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. You are further commanded to return this warrant on or before the day of 18 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

Principal	
Interest	
Costs	
Execution	
TOTAL ...	

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 151.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 332 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B., of
against
C. D., of

CERTIFIED that no [*or partial, as the case may be, and if partial, state to what extent*] satisfaction of the decree of this Court, in Civil Regular No. of 18 a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 152.

NOTICE TO ATTACHING CREDITOR.

Section 345 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .
Miscellaneous No. *of* 18 .

A.B., of
against
C.D. of

To

WHEREAS has made application to this Court for the removal of attachment on
placed at your instance in execution of the decree in Civil Regular No. of 18 this is to give you notice to appear before this Court on , the day of , 18 , 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 18 .

L. S.

Judge.

No. 153.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 376 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .

A.B. of
against
C.D. of

To

WHEREAS the evidence of is required by the
in the above suit; and whereas you are requested to take the examination of such witnesses and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [Process to require the attendance of the witness will be issued by this Court on your application]*

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 154.

COMMISSION FOR A LOCAL ENQUIRY, OR FOR THE INVESTIGATION OF ACCOUNTS.

Sections 386 and 390 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

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 which you may desire to examine or inspect, will be issued by this Court 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 18 .

L. S.

Judge.

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* † Not necessary where the commission goes to the another Court.

No. 155.

UNDERTAKING BY NEXT FRIEND OF MINOR TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

Section 434 of the Code of Civil Procedure.

IN THE COURT OF , AT

A. B. of
against
C. D. of

I, the undersigned , being the next friend of *A.B.*, who is a minor, and who is desirous of presenting a plaint [*or* of taking proceedings] in this Court against *C. D.* of, &c., hereby undertake to be responsible for the costs of the said *C. D.* of, &c., in the cause, and that if the said *A. B.* fail to pay to the said *C. D.*, when and in such manner as the Court shall order, all such costs of such cause as the Court shall direct him to pay to the said *C. D.*, I will forthwith pay the same.

Dated this day of

(Signed)

No. 156.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 477 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .

A.B. of
against
C.D. of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to ;
these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 157.

ORDER FOR COMMITTAL.

Section 480 of the Code of Civil Procedure.

IN THE COURT OF , AT

Civil Regular No. *of* 18 .

A. B., of
against
C. D. of

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 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 has failed to do : it is ordered that the said defendant be committed to custody until the decision of the suit;
or if judgment be given against until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 158.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B., of
against
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit these are to command you to call upon the said defendant on or before the day of 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 fulfil any decree that may be passed against or to appear and show cause why 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 in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this Warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 159.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of
against
C. D. of

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 in the suit, and whereas the Court has called upon the said to furnish such security which 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 in what manner you shall have executed this warrant, make appear to this Court immediately after the execution hereof, and have you here then this Warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 487 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of

against

C. D. of

To *defendant* and

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 whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 161.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 487 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of

against

C. D. of

To

Defendant.

IT is ordered that you the said be, and you are hereby, prohibited and restrained until the further order of this Court, from alienating 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 18 .

SCHEDULE.

L. S.

Judge.

FORM No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 487 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of

against

C. D. of

To

IT is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [*money, now in hands belonging to the said defendant, or debts, as the case may be, describing them*] and that the said be

and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [*money, &c.*], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 487 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18 .

A. B. of

against

C. D. of

To *defendant* and

to

Manager of *Company.*

It is ordered that , the defendant, be and hereby prohibited and restrained, until the further order of the Court, from making any transfer of shares being in the aforesaid Company, or from receiving payment of any dividends thereof, and you Manager of the said Company, 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 18 .

L. S.

Judge.

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No. 164.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 497 of the Code of Civil Procedure.

IN THE COURT OF AT

A. B. of

against

C. D. of

Take notice that I, *A. B.*, intend to apply at the sitting of the Court at aforesaid, on the day of for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in to recover damages for the breach of the contract for the specific performance of which this suit was commenced [*or* to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding up of which the suit was commenced, or from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, *or as the case may be*].

Dated this day of 186 .

A. B.

To *C. D.*

[*N.B.—Where the injunction is to be applied for against a party whose name and address does not appear upon any proceeding already filed in the suit, it must be stated in full to enable the proper officer to serve the notice.*]

No. 165.

BOND TO BE GIVEN BY RECEIVER.

Section 501 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No.

A. B. of

against

C. D. of

KNOW all men by these presents, that we, *A. B.* of, &c., and *C. D.* of, &c., and *E. F.* of, &c., are jointly and severally bound to *G. H.*, Registrar of the Court of in Rs. to be paid to the said *G. H.*, or his attorney, executors, administrators, or assigns. 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 one thousand eight hundred and

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of (*here insert object of suit*).

And whereas the said *A. B.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property, and to get in the outstanding movable property, of *C. D.*, the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden *A. B.* 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 immovable property, and in respect of the movable property of the said *C. D.* [*or* as may be] 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 shall remain in full force.

A. B. (L. S.)

C. D. (L. S.)

Signed, and delivered by the above-bounden in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.*

FORM No. 166.

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 507 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Regular No. *of* 18

A. B. of

against

C. D. of

To

WHEREAS the above-mentioned plaintiff and defendant have greed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your arward in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on our application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18.

L. S.

Judge.

No. 167.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 507 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Regular No. *of* 18 .

A. B. of

against

C. D. of

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing and submit the same to this Court, together with all proceedings, depositions, and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrator shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 168.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 534 of the Code of Civil Procedure.

No. OF SUIT.

IN THE HIGH COURT OF AT .

Plaintiff.

Defendant.

To [*Here enter the defendant's name, description and address.*]

Whereas [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under Chapter XLII. of the Code of Civil Procedure for Rs. principal and interest [*or* Rs. balance of principal and interest] due to him as the Payee [*or* Indorsee] of a Bill of Exchange [*or* Hundí *or* Promissory Note] of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within seven days from the service hereof, inclusive of the day of such service, 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 seven days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

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.

[*Here copy the Bill of Exchange, Hundí or Promissory Note, and all endorsements upon it.*]

No. 169.

MEMORANDUM OF APPEAL.

Section 549 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(*Name, &c., as in Register.*) Plaintiff—Appellant.

(*Name, &c., as in Register.*) Defendant—Respondent.

[*Name of Appellant*] Plaintiff [*or* Defendant] above-named appeals to the High Court at [*or* District Court at , as the case may be] against the decree of in the above suit, dated the day of , for the following reasons, namely [*here state the grounds of objection.*]

No. 170.

REGISTER OF APPEALS.

Section 563 of the Code of Civil Procedure.

COURT (OR HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES in the year 18 .

Date of Memorandum	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

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No. 171.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 568 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant* v. *Respondent.*

APPEAL from the of the Court of
dated the day of 18

Respondent.

To

Take notice that an appeal from the decree of
in this case has been presented by
and registered in this Court, and that the
day of 18 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 *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

NOTE.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.

No. 172.

DECREE ON APPEAL.

Section 593 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant* v. , *Respondent.*

APPEAL from the of the Court of , dated the
day of 18 .

Memorandum of Appeal.

, *Plaintiff.*

, *Defendant.*

Plaintiff [*or* defendant] above-named appeals to the Court at
against the decree of in the above suit, dated the
day of 18 , for the following reasons, namely:

[*here state the reasons*]

This appeal coming on for hearing on the day of 18 ,
before , in the presence of
for the Appellant, and of for the Respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to , are to be paid by
The costs of the original suit are to be paid by

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 173.

REGISTER OF APPEALS FROM APPELLATE DECREES.

Section 607 of the Code of Civil Procedure.

HIGH COURT AT

REGISTER OF APPEALS FROM APPELLATE DECREES.

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit, and of Appeal.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed, or altered.	For what, or Amount.

No. 174.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 648 of the Code of Civil Pocedure.

IN THE COURT OF AT

, *Plaintiff* v. , *Defendant.*

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 175.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF AT

A. B. of
against
C. D. of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, *A. B.* [*or C. D.*], have hitherto employed as my pleader *G. H.* of in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is *J. K.* of

A. B. [or *C. D.*]

No. 176.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [*place of office*] from *ten* till *four*, except on [*here insert the day on which the office will be closed*] when the office will be closed at *one*.

WHITLEY STOKES,
Secretary to the Government of India.

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