

THE BURMA CODE

VOLUME XII

Published under the Authority of the Government of the Union of Burma



ပြည်ထောင်စုမြန်မာနိုင်ငံ

ဥပဒေ

အတွဲ ၁၂

THE BURMA CODE

VOLUME XII

ပြည်ထောင်စုမြန်မာနိုင်ငံအစိုးရအမိန့်အရ ပုံနှိပ်ဖြန့်ချိသည်။

Published under the Authority of the Government of the Union of Burma.

နိဒါန်း။

ဤဥပဒေအတွဲ ၁၂ တွင်၊ တရားမကျင့်ထုံးနှင့်တကွ၊ သက်သေခံဥပဒေနှင့် စပ်လျဉ်းသည့် ဥပဒေများပါဝင်ပါသည်။

အပိုင်း ၂၈ မှာ တရားမကျင့်ထုံးဥပဒေနှင့်သာ သက်ဆိုင်၍၊ အပိုင်း ၂၉ မှာ သက်သေခံဥပဒေနှင့် သက်ဆိုင်ပါသည်။

ထိုဥပဒေများကို၊ ၁၉၅၄ ခု၊ ဒီဇင်ဘာလ ၃၁ ရက်နေ့ထိ ပြင်ဆင်သည့်အတိုင်း ပုံနှိပ်ထားပါသည်။

စံညွှန့်၊

အတွင်းရေးမှူး၊
ဥပဒေဘာသာပြန်နှင့် ဥပဒေပြင်ဆင်ရေး ကော်မီတီ၊
တရားရေးဝန်ကြီးဌာန။

ရန်ကုန်မြို့၊ ၁၉၂၀ ပြည့်နှစ်၊ သီတင်းကျွတ်လဆန်း ၁၂ ရက်။
(၁၉၅၈ ခု၊ အောက်တိုဘာလ ၂၄ ရက်။)

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THE CODE OF CIVIL PROCEDURE.

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THE CODE OF CIVIL PROCEDURE.

[INDIA ACT V, 1908.] (1st January, 1909.)

PRELIMINARY.

1. * * * *

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

(1) " Code " includes rules ;

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

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

(*b*) any order of dismissal for default.

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

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

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

(5) " foreign Court " means a Court situate beyond the limits of the Union of Burma which has no authority in the Union of Burma and is not established or continued by the President of the Union;

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

(7) " Government Pleader " includes any officer appointed by the President of the Union to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader ;

(8) " Judge " means the presiding officer of a civil Court ;

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

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

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

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

(13) " moveable property " includes growing crops ;

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

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

(16) " prescribed " means prescribed by rules ;

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

(*a*) every Judge ;

(*b*) every member of the Indian Civil Service or of the Burma Civil Service (Class I) ;

(*c*) every commissioned or gazetted officer in the military, naval or air forces of [the Government][1];

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

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

(*f*) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

offenders to justice, or to protect the public health, safety or convenience ;

(*g*) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government ; and

(*h*) every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty ;

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

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

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

Subordination of Courts.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

Savings.

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

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

Application of the Code to revenue Courts.

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

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

Pecuniary jurisdiction.

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

Courts under the Burma Small Cause Courts Act.

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

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

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immoveable property; and

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

section 9,

sections 91 and 92,

sections 94 and 95 so far as they authorize or relate to—

(i) orders for the attachment of immoveable property,

(ii) injunctions,

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

(iv) the interlocutory orders referred to in clause (*e*) of section 94,

and sections 96 to 112 and 115.

8. * * * *

PART I.

SUITS IN GENERAL.

JURISDICTION OF THE COURTS AND *Res judicata*.

Courts to try all civil suits unless barred.

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

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

Stay of suit.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court in the Union of Burma having jurisdiction to grant the relief claimed, or before [the Supreme Court.][1]

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

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Res judicata.

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

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

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

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

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

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

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

Bar to further suit.

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

When foreign judgment not conclusive.

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

(*a*) where it has not been pronounced by a Court of competent jurisdiction ;

(*b*) where it has not been given on the merits of the case ;

(*c*) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of the Union of Burma in cases in which such law is applicable ;

(*d*) where the proceedings in which the judgment was obtained are opposed to natural justice ;

(*e*) where it has been obtained by fraud;

(*f*) where it sustains a claim founded on a breach of any law in force in the Union of Burma.

Presumption as to foreign judgments.

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

PLACE OF SUING.

Court in which suits to be instituted.

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

Suits to be instituted where subject matter situate.

[1] **16.** Subject to the pecuniary or other limitations prescribed by any law, suits—

(*a*) for the recovery of immoveable property with or without rent or profits,

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

(*c*) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,

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

(*e*) for compensation for wrong to immoveable property,

(*f*) for the recovery of moveable property actually under distraint or attachment,

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

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

Explanation.—In this section "property" means property situate in the Union of Burma.

Suits for immoveable property

[1] **17.** Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different

[1] Sections 16 and 17 do not apply to the High Court in the exercise of its original civil jurisdiction, *see* section 120 *post*.

situate within jurisdiction of different Courts.

Courts, the suit may be instituted in any Court within the local limits of 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 is cognizable by such Court.

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

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

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

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

Suits for compensation for wrongs to person or moveables.

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

Illustrations.

(*a*) *A*, residing in Mandalay, beats *B* in Rangoon. *B* may sue *A* either in Rangoon or in Mandalay.

(*b*) *A*, residing in Mandalay, publishes in Rangoon statements defamatory of *B*. *B* may sue *A* either in Rangoon or in Mandalay.

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

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

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

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[1] Section 20 does not apply to the High Court in the exercise of its original civil jurisdiction, *see* section 120 *post*.

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

(*c*) the cause of action, wholly or in part, arises.

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

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

Illustrations.

(*a*) *A* is a tradesman in Rangoon. *B* carries on business in Mandalay. *B*, by his agent in Rangoon, buys goods of *A* and requests *A* to deliver them to the Burma Railways. *A* delivers the goods accordingly in Rangoon. *A* may sue *B* for the price of the goods either in Rangoon, where the cause of action has arisen, or in Mandalay, where *B* carries on business.

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

Objections to jurisdiction.

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

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

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

To what Court application lies.

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

(*2*) Where such Courts are subordinate to different appellate Courts, the application shall be made to the High Court.

General power of transfer and withdrawal.

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

(*a*) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(*b*) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same ; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

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

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

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

25. * * * *

INSTITUTION OF SUITS.

Institution of suits.

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

SUMMONS AND DISCOVERY.

Summons to defendants.

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

28. * * * *

Service of foreign summonses.

29. Summonses issued by any civil or revenue Court situate beyond the limits of the Union of Burma may be sent to the Courts in the Union of Burma and served as if they had been issued by such Courts :

Provided that the President of the Union has, by notification in the Gazette, declared the provisions of this section to apply to such Courts.

Power to order discovery and the like.

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

(*a*) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence ;

(*b*) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;

(*c*) order any fact to be proved by affidavit.

Summons to witness.

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

Penalty for default.

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

(*a*) issue a warrant for his arrest ;

(*b*) attach and sell his property ;

(*c*) impose a fine upon him not exceeding five hundred rupees ;

(*d*) order him to furnish security for his appearance and in default commit him to the civil prison.

JUDGMENT AND DECREE.

Judgment and decree.

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

INTEREST.

Interest.

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

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

COSTS.

Cost.

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

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

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

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

35A. (*1*) If in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

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

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

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

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

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

PART II.

EXECUTION.

GENERAL.

Application to orders.

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

Definition of Court which passed a decree.

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

(*a*) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(*b*) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

COURTS BY WHICH DECREES MAY BE EXECUTED.

Court by which decree may be executed.

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

Transfer of decree.

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

(*a*) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(*c*) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(*d*) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

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

40. * * * *

Result of execution proceedings to be certified.

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

Powers of Court in executing transferred decree.

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

Execution of decrees passed by Courts in places to which this Part does not extend.

43. Any decree passed by a civil Court established in any part of the Union of Burma to which the provisions relating to execution do not extend may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in the Union of Burma.

[1] **44.** * * * *

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

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

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

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

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

Explanation 2.—"Reciprocating territory" means any country or territory, [* * * *][1] which the President of the Union may, from time to time, by notification in the Gazette declare to be reciprocating territory for the purposes of this section: and "superior Courts," with reference to any such territory, means such Courts as may be specified in the said notification.

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

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

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

(*b*) in no case includes an arbitration award,[1] even if such award is enforceable as a decree or judgment.

45. * * * *

Precepts.

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

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

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

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE.

Questions to be determined by the Court executing decree.

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

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

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

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

LIMIT OF TIME FOR EXECUTION.

Execution barred in certain cases.

48. (*1*) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same

[1] For the enforcement of foreign awards, *see* the Arbitration (Protocol and Convention) Act (Volume XI of this Code).

decree shall be made upon any fresh application presented after the expiration of twelve years from—

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

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

(*2*) Nothing in this section shall be deemed—

(*a*) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application ; or

(*b*) to limit or otherwise affect the operation of article 183 of the first Schedule to the Limitation Act.

TRANSFEREES AND LEGAL REPRESENTATIVES.

Transferee.

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

Legal representative.

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

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

PROCEDURE IN EXECUTION.

Powers of Court to enforce execution.

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

(*a*) by delivery of any property specifically decreed ;

(*b*) by attachment and sale or by sale without attachment of any property ;

(*c*) by arrest and detention in prison ;

(*d*) by appointing a receiver ; or

(*e*) in such other manner as the nature of the relief granted may require:

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

(*a*) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(*b*) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(*c*) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

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

Enforcement of decree against legal representative.

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

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

Liability of ancestral property.

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

Partition of estate or separation of share.

54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government or for the separate possession of a share of such an estate, the partition of the estate or the separation of

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

ARREST AND DETENTION.

Arrest and detention.

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

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

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

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

Provided, fourthly, that where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

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

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

(*4*) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court,

that he will within one month so apply, and that he will appear, when called upon, in any proceedings upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Prohibition of arrest or detention of women in execution of decree for money.

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

Subsistence allowance.

57. The President of the Union may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Detention and release.

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

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

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

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

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

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

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

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

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

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

Release on ground of illness.

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

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

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

(*a*) by the President of the Union on the ground of the existence of any infectious or contagious disease, or

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

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

ATTACHMENT.

Property liable to attachment and sale in execution of decree.

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

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

(*a*) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ;

(*c*) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;

(*d*) books of account ;

(*e*) a mere right to sue for damages ;

(*f*) any right of personal service ;

(*g*) stipends and gratuities allowed to pensioners of the Government or payable out of any service family pension fund notified in the Gazette by the President of the Union in this behalf, and political pensions ;

(*h*) the wages of labourers and domestic servants, whether payable in money or in kind, and salary, to the extent of the first hundred rupees and one-half the remainder of such salary ;

(*i*) the salary of any public officer or of any servant of a railway administration or local authority to the extent of the first hundred rupees and one-half the remainder of such salary :

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

(*j*) the pay and allowances of persons to whom the Burma Army Act applies, or of persons other than commissioned officers to whom the Burma Naval Volunteer Reserve (Discipline) Act or any other law relating to the Navy applies.

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

(*l*) any allowance forming part of the emoluments of any public officer or of any servant of a railway administration or local authority which the President of the Union may by notification[2] in the Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such officer or servant while under suspension ;

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

(*n*) a right to future maintenance ;

(*o*) any allowance declared by any enactment in force in the Union of Burma to be exempt from liability to attachment or sale in execution of a decree ; and,

(*p*) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

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

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] For exemption of certain kinds of allowances, see *Burma Gazette*, 1941, Part I, page 317.

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

(*2*) Nothing in this section shall be deemed—

to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

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61. The President of the Union may, by general or special order published in the Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the President of the Union to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

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

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

(*3*) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

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

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

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein, and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. Private alienation property after attachment to be void.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

SALE.

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

66. (*1*) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

(*2*) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

67. (*1*) The President of the Union may, by notification in the Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the President of the Union, to make it impossible to fix their value. Power for President to make rules as to sale of land in execution of decrees for payment of money.

(*2*) When on the date on which this Code came into operation in any local area any special rules as to sale of land in execution of decrees were in force therein, the President of the Union may, by notification in the Gazette, declare such rules to be in force, or may, by a like notification, modify the same.

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

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVEABLE PROPERTY.

68. The President of the Union may declare by notification in the Gazette that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector. Power to prescribe rules for transferring to Collector execution of certain decrees.

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

ules of ocedure.

70. (*1*) The President of the Union may make rules consistent with the aforesaid provisions :—

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

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

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

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

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

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

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

Distribution of Assets.

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73. (*1*) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the

execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons : rateably distributed among decree-holders.

Provided as follows:—

(*a*) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale ;

(*b*) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold ;

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

first, in defraying the expenses of the sale ;

secondly, in discharging the amount due under the decree ;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any) ; and

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

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

(*3*) Nothing in this section affects any right of the Government.

RESISTANCE TO EXECUTION.

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

PART III.

INCIDENTAL PROCEEDINGS.

COMMISSIONS.

Power of Court to issue commissions.

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

(*a*) to examine any person;
(*b*) to make a local investigation;
(*c*) to examine or adjust accounts; or
(*d*) to make a partition.

76. * * * *

Letter of request.

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

Commissions issued by foreign Courts.

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

[1](*a*) * * * *
[1](*b*) * * * *
(*c*) Courts of any foreign country.

PART IV.

SUITS IN PARTICULAR CASES.

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

Suits by or against the Government.

[2]**79.** In a suit by or against the Government touching the affairs of the Union the authority to be named as plaintiff or defendant, as the case may be, shall be the Union of Burma.

Notice.

80. No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such a public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered or left at the office of—

[3](*a*) in the case of any suit against the Government, a Secretary to the Government or the Collector of the District, and
[3](*b*) in the case of a suit against a public officer, the officer against whom the suit is brought.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] Substituted *ibid.*
[3] Substituted for clauses (*a*) to (*d*) *ibid.*

stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left:

[1] Provided that if at the date of the coming into operation of the Constitution any legal proceedings are pending to which the Government of Burma is a party, the Union of Burma shall be substituted in those proceedings for the Government of Burma.

Exemption from arrest and personal appearance.

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

(*a*) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and

(*b*) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Execution of decree.

82. (*1*) Where the decree is against[* * * *][2] the Government [* * * *][2] or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the President of the Union.

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

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

When aliens may sue.

83. (*1*) Alien enemies residing in the Union of Burma with the permission of the President of the Union, and alien friends, may sue in the Courts of the Union of Burma, as if they were [citizens of the Union].[3]

(*2*) No alien enemy residing in the Union of Burma without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country the Government of which is at war with the [Union of Burma][3], and carrying on business in that country without a licence in that behalf under the hand [* * * *][3] of a Secretary to the Government, shall, for the purpose of sub-section (*2*), be deemed to be an alien enemy residing in a foreign country.

When foreign States may sue.

84. (*1*) A foreign State may sue in any Court of the Union of Burma:

Provided that such State has been recognized [* * * *][3] by the President of the Union:

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

(*2*) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized [* * * *][3] by the President of the Union.

[1] This proviso was added by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] Omitted *ibid.*
[3] Substituted *ibid.*

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

85. (*1*) Persons specially appointed by order of the Government at the request of any [* * * *][1] Ruling Chief, [* * * *][1] whether residing within or without the Union of Burma, or at the request of any person competent, in the opinion of the Government, to act on behalf of such [* *][1] Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such [* *][1] Chief.

(*2*) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the [* *][1] Chief.

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

Suits against Chiefs, ambassadors and envoys.

86. (*1*) Any such [* *][1] Chief, and any ambassador or [envoy of a foreign State or any member of a British foreign military mission][2] may, with the consent of the President of the Union, certified by the signature of a Secretary to the Government, but not without such consent, be sued in any competent Court.

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

(*a*) has instituted a suit in the Court against the person desiring to sue him, or

(*b*) by himself or another trades within the local limits of the jurisdiction of the Court, or

(*c*) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(*3*) No such [* *][1] Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the President of the Union certified as aforesaid, no decree shall be executed against the property of any such [* *][1] Chief, ambassador or envoy.

(*4*) * * * *

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a [* *][1] Chief, ambassador or envoy from whom he holds or claims to hold the property.

187. * * * *

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Substituted *ibid.*

INTERPLEADER.

Where interpleader suit may be instituted.

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

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

PART V.

SPECIAL PROCEEDINGS.

ARBITRATION.

89.[1] (*1*) * * * *

(*2*) * * * *

SPECIAL CASE.

Power to state case for opinion of Court.

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

SUITS RELATING TO PUBLIC MATTERS.

Public nuisances.

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

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

Public charities.

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

(*a*) removing any trustee ;

(*b*) appointing a new trustee ;

(*c*) vesting any property in a trustee ;

[1] Repealed by Burma Act IV, 1944.

(*d*) directing accounts and inquiries;

(*e*) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;

(*f*) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;

(*g*) settling a scheme; or

(*h*) granting such further or other relief as the nature of the case may require.

(*2*) No suit claiming any of the reliefs specified in sub-section (*1*) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

Exercise of powers of Attorney-General by Collector, etc.

93. The powers conferred by sections 91 and 92 on the Attorney-General may be, with the previous sanction of the President of the Union, exercised also by the Collector or by such officer as the President of the Union may appoint in this behalf.

PART VI.

SUPPLEMENTAL PROCEEDINGS.

Supplemental proceedings.

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

(*a*) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(*b*) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(*c*) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(*d*) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(*e*) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compensation for obtaining arrest, attachment or injunction on insufficient grounds.

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

(*a*) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(*b*) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding

one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

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

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

PART VII.

APPEALS.

APPEALS FROM ORIGINAL DECREES.

Appeal from original decree.

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

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

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

Appeal from final decree where no appeal from preliminary decree.

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

Decision where appeal heard by two or more Judges.

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

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

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

[1](*3*) * * * *

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

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

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

APPEALS FROM APPELLATE DECREES.

Second appeal.

100. (*1*) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, on any of the following grounds, namely :—

(*a*) the decision being contrary to law or to some usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law ;

(*c*) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits;

[1](*d*) in a suit relating to immoveable property or to any right or interest in immoveable property, and in any other suit where the amount or value of the subject-matter of the original suit exceeds Rs. 500, any ground which would be a good ground of appeal if the decree had been passed in an original suit whenever the decree of the appellate Court varies or reverses, otherwise than as to costs, the decree of the original Court.

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

Second appeal on no other grounds.

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

No second appeal in certain suits.

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

Power of High Court to determine issues of fact.

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

APPEALS FROM ORDERS.

Orders from which appeal lies.

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

[2](*a*) * * *

[2](*b*) * * * *

[1] Inserted by Burma Act XVII, 1945.

[2] Repealed by Burma Act IV, 1944.

[1](*c*) * * * *
[1](*d*) * * * *
[1](*e*) * * * *
[1](*f*) * * * *

(*ff*) an order under section 35A ;

(*g*) an order under section 95 ;

(*h*) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree ;

(*i*) any order made under rules from which an appeal is expressly allowed by rules :

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

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

Other orders.

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

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

What Courts to hear appeals.

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

GENERAL PROVISIONS RELATING TO APPEALS.

Powers of appellate Court.

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

(*a*) to determine a case finally ;

(*b*) to remand a case ;

(*c*) to frame issues and refer them for trial ;

(*d*) to take additional evidence or to require such evidence to be taken.

(*2*) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and

[1] Repealed by Burma Act IV, 1944.

imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Procedure in appeals from appellate decrees and orders.

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

(*a*) from appellate decrees, and

(*b*) from orders made under this Code or under any special or local law in which a different procedure is not provided.

APPEAL TO THE SUPREME COURT.

When appeals lie to Supreme Court.

109. Subject to such rules as may, from time to time, be made by [the Supreme Court][1] regarding appeals from [other Courts in the Union of Burma][1] and to the provisions hereinafter contained, an appeal shall lie to [the Supreme Court][1]—

(*a*) from any decree or final order passed on appeal by the High Court or by any other Court of final appellate jurisdiction ;

(*b*) from any decree or final order passed by the High Court in the exercise of original civil jurisdiction ; and

(*c*) from any decree or order when the case, as hereinafter provided, is certified to be a fit one for appeal to [the Supreme Court.][1]

Value of subject-matter.

110. In each of the cases mentioned in clauses (*a*) and (*b*) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to [the Supreme Court][1] must be the same sum or upwards,

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

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

Bar of certain appeals.

111. Notwithstanding anything contained in section 109, no appeal shall lie to [the Supreme Court][1]—

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

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

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Savings.

[1] **112.** Nothing contained in this Code shall be deemed to affect any of the powers vested in the Supreme Court under the Constitution or under any other law, and nothing herein contained shall apply to any matter of criminal or admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VIII.

REFERENCE, REVIEW AND REVISION.

Reference to High Court.

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

Review.

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

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

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

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

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

Revision.

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

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

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

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

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

PART IX.

SPECIAL PROVISIONS RELATING TO THE HIGH COURT.

116. * * * *

Application of Code to the High Court.

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

Execution of decree before ascertainment of costs.

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

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

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.

Unauthorized persons not to address Court.

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

Provisions not applicable to High Court in original civil jurisdiction.

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

PART X.

RULES.

Effect of rules in First Schedule.

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

Power of High Court to make rules.

122. The High Court may from time to time, after previous publication, make rules regulating its procedure and the procedure of the civil Courts subordinate to its superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

Constitution of Rule Committee.

123. (*1*) A committee, to be called the Rule Committee, shall be constituted at Rangoon and shall consist of the following persons, namely—

(*a*) three Judges of the High Court, one of whom at least has served for three years as a District Judge or a Judge of the High Court

(*b*) a barrister practising in the High Court,

(*c*) an advocate of the High Court not being a barrister, and

(*d*) a Judge of a civil Court subordinate to the High Court.

(*2*) * * * *

(*3*) The members of the Committee shall be appointed by the Chief Justice who shall also nominate one of their number to be President:

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

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

(5) There shall be a Secretary to the Committee, who shall be appointed by the Chief Justice and shall receive such remuneration as may be provided in this behalf by the President of the Union.

Co : mittee to report to High Court.

124. The Rule Committee shall make a report to the High Court on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

125. * * * *

Rules to be subject to approval.

126. Rules made under the foregoing provisions shall be subject to the previous approval of the President of the Union.

Publication of rules.

127. Rules so made and approved shall be published in the Gazette, and shall from the date of publication or from such other date as may be specified have the same force and effect as if they had been contained in the First Schedule.

Matters for which rules may provide.

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

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

(a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service ;

(b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale ;

(c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction ;

(d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts ;

(e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not ;

(f) summary procedure—

(i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

on a contract express or implied ; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty ; or

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only ; or

on a trust ; or

(ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant ;

(*g*) procedure by way of originating summons ;

(*h*) consolidation of suits, appeals and other proceedings ;

(*i*) delegation to any Registrar or Master or other official of the Court of any judicial, *quasi*-judicial and non-judicial duties ; and

(*j*) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of civil Courts.

Power of High Court to make rules as to its original civil procedure.

129. Notwithstanding anything in this Code, the High Court may make such rules [1] [* * * *][2] to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit.

130. * * * *

Publication of rules.

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

PART XI.

MISCELLANEOUS.

Exemption of certain women from personal appearance.

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

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

Exemption of other persons.

133. (*1*) The President of the Union may, by notification in the Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of the President of the Union, entitles him to the privilege of exemption.

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

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[1] *See* the High Court Rules and Orders.

[2] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

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

Arrest other than in execution of decree.

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

Exemption from arrest under civil process.

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

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

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

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

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

(*a*) if he is a member of either Chamber of the Union Parliament, during the continuance of any meeting of such Chamber;

(*b*) if he is a member of any committee of such Chamber, during the continuance of any meeting of such committee;

(*c*) if he is a member of either Chamber of the Union Parliament, during the continuance of a joint sitting of the Chambers, or of a meeting of a conference or joint committee of the Chambers of which he is a member;

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

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

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

136. (*1*) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest

or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

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

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

(*4*) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the [Rangoon City Civil Court,][1] and that Court, on receipt of the copy and amount shall proceed as if it were the District Court.

Language of subordinate Courts.

137. (*1*) The language which, on the commencement of this Code, is the language of any Court subordinate to the High Court shall continue to be the language of such subordinate Court until the President of the Union otherwise directs.

(2) The President of the Union may declare what shall be the language of any such Court and in what character applications to and proceedings in such Court shall be written.

[2] (*3*) * * * *

[2] **138** * * * *

Oath on affidavit by whom to be administered.

139. In the case of any affidavit under this Code—

(*a*) any Court or Magistrate, or

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

(*c*) any officer appointed by any other Court which the President of the Union has generally or specially empowered in this behalf,

may administer the oath to the deponent.

Assessors in causes of salvage, etc.

140. (*1*) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted *ibid.*

cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors ; and such assessors shall attend and assist accordingly.

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

Miscellaneous proceedings.

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

Orders and notices to be in writing.

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

Postage.

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

Provided that the President of the Union may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

Application for restitution.

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

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

Enforcemen of liability of surety.

145. Where any person has become liable as surety—

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

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

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

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

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

Proceedings by or against representatives.

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

Consent or agreement by persons under disability.

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

Enlargement of time.

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

Power to make up deficiency of court-fees.

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

Transfer of business.

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

Saving of inherent powers of Court.

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

Amendment of judgments, decrees or orders.

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

General power to amend.

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

THE FIRST SCHEDULE.

ORDER I.

Parties to Suits.

Rules.

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

ORDER II.

Frame of Suit.

1. Frame of suit.
2. Suit to include the whole claim.
Relinquishment of part of claim.
Omission to sue for one of several reliefs.
3. Joinder of causes of action.
4. Only certain claims to be joined with claim for recovery of immoveable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to misjoinder.

ORDER III.

Recognized Agents and Pleaders.

1. Appearances, etc., may be in person, by recognized agent or by pleader.
2. Recognized agents.
3. Service of process on recognized agent.
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.
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Institution of Suits.

Rules.

1. Suit to be commenced by plaint.
2. Register of suits.

ORDER V.

Issue and Service of Summons.

Issue of Summons.

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons.

9. Delivery or transmission of summons for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person when practicable, or on his agent.
13. Service on agent by whom defendant carries on business.
14. Service on agent in charge in suits for immoveable property.
15. Where service may be on adult member of defendant's family.
16. Person served to sign acknowledgment.
17. Procedure when defendant refuses to accept service, or cannot be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.
20. Substituted service.
Effect of substituted service.
Where service substituted, time for appearance to be fixed.
20A. Address for service to be filed in Court.
21. Service of summons where defendant resides within jurisdiction of another Court.
21A. Translation of summons for service outside the Union of Burma.
22. Service within Rangoon of summons issued by Courts outside.
23. Duty of Court to which summons is sent.

Rules.

23A. Affidavits of process-servers and identifiers.
24. Service on defendant in prison.
25. Service where defendant resides out of the Union of Burma and has no agent.
25A. Service of summons by registered post on defendant residing in India or Pakistan.
26. Service in foreign territory through Political Agent or Court.
27. Service on civil public officer or on servant of railway administration or local authority.
28. Service on soldiers, sailors or airmen.
29. Duty of person to whom summons is delivered or sent for service.
30. Substitution of letter for summons.

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Pleadings generally.

1. Pleading.
2. Pleading to state material facts and not evidence.
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4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
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1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immoveable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.

Rules.

7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint.
   Concise statements.
10. Return of plaint.
    Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in plaint.

14. Production of document on which plaintiff sues.
    List of other documents.
15. Statement in case of documents not in plaintiff's possession or power.
16. Suits on lost negotiable instruments.
17. Production of shop-book.
    Original entry to be marked and returned.
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Written Statement and Set-off.

1. Written statement.
2. New facts must be specially pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.
6. Particulars of set-off to be given in written statement.
   Effect of set-off.
7. Defence or set-off founded on separate grounds.
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9. Subsequent pleadings.
10. Procedure when party fails to present written statement called for by Court.

ORDER IX.

Appearance of Parties and Consequences of Non-appearance.

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.

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4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons.
6. Procedure when only plaintiff appears.
When summons duly served.
When summons not duly served.
When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure when defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Setting aside Decrees or Orders ex-parte.

13. Setting aside decree or order *exp-arte* against defendant.
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Examination of Parties by the Court.

1. Ascertainment whether allegations in pleadings are admitted or denied.
2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
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Discovery and Inspection.

1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.

Rules.

12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleadings or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
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ORDER XII.

Admissions.

1. Notice of admission of case.
2. Notice to admit documents.
3. Form of notice.
4. Notice to admit facts.
5. Form of admissions.
6. Judgment on admissions.
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8. Notice to produce documents.
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Production, Impounding and Return of Documents.

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.
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7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
10A. Exhibits not to be filed on the record until after termination of trial.
10B. Withdrawal of exhibit after judgment.
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ORDER XIV.

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

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

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Disposal of the Suit at the first hearing.

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
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ORDER XVI.

Summoning and Attendance of Witnesses.

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.
   Experts.
   Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.
   Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons.
11. If witness appears, attachment may be withdrawn.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document.

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16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
19. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
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ORDER XVII.

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2. Procedure if parties fail to appear on day fixed.
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1. Right to begin.
2. Statement and production of evidence.
3. Evidence where several issues.
4. Witnesses to be examined in open Court.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted.
6A. Payment of interpreters where no interpreter paid by Government.
7. Evidence under section 138.
8. * * * *
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down.
11. Questions objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. Judge unable to make such memorandum to record reasons of his inability.
15. Power to deal with evidence taken before another Judge.
16. Power to examine witness immediately.
17. Court may recall and examine witness.
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Affidavits.

Rules.

1. Power to order any point to be proved by affidavit.
2. Power to order attendance of deponent for cross-examination.
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4. Mode of taking oath or affirmation by declarant of affidavit.
5. Form of affidavit.
6. Mode of writing affidavit.
7. Address of person making affidavit.
8. Mode of speaking by declarant to fact within his own knowledge.
9. Mode of speaking by declarant to fact not within his own knowledge.
10. Identification of person making affidavit not personally known to Commissioner.
11. Interpretation of affidavit when person making it is ignorant of the language in which it is written.
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1. Judgment when pronounced.
2. Power to pronounce judgment written by Judge's predecessor.
3. Judgment to be signed.
4. Judgments of Small Cause Courts.
Judgments of other Courts.
5. Court to state its decision on each issue.
6. Contents of decree.
7. Date of decree.
8. Procedure where Judge has vacated office before signing decree.
9. Decree for recovery of immoveable property.
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11. Decree may direct payment by instalments.
Order, after decree, for payment by instalments.
12. Decree for possession and mesne profits.
13. Decree in administration suit.
14. Decree in pre-emption suit.
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16. Decree in suit for account between principal and agent.
17. Special directions as to accounts.
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Appeal from decree relating to set-off.

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20. Certified copies of judgment and decree to be furnished.
21. Certificate to be issued to Land Records Department when interests in land are affected.
22. Form of certificate.

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Execution of Decrees and Orders.

Payment under Decree.

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

Courts executing Decrees.

3. Lands situate in more than one jurisdiction.
4. Transfer to Court of Small Causes.
5. Mode of transfer.
6. Procedure where Court desires that its own decree shall be executed by another Court.
7. Court receiving copies of decree, etc., to file same without proof.
8. Execution of decree or order by Court to which it is sent.
9. Execution by High Court of decree transferred by other Court.

Application for Execution.

10. Application for execution.
10A. Procedure when no application is made to execute transferred decree.
11. Oral application.
Written application.
12. Application for attachment of moveable property not in judgment-debtor's possession.
13. Application for attachment of immoveable property to contain certain particulars.
14. Power to require certified extract from Collector's register in certain cases.
15. Application for execution by joint decree-holder.
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THE FIRST SCHEDULE.

ORDER I.

Parties to Suits.

Who may be joined as plaintiffs.

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

Power of Court to order separate trials.

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

Who may be joined as defendants.

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

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

4. Judgment may be given without any amendment—

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

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

Defendant need not be interested in all the relief claimed.

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

Joinder of parties liable on same contract.

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

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

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

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

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

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

Misjoinder and non-joinder.

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

Suit in name of wrong plaintiff.

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

Court may strike out or add parties.

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

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

Where defendant added, plaint to be amended.

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

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

Conduct of suit.

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

Appearance of one of several plaintiffs or defendants for others.

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

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

Objections as to nonjoinder or misjoinder.

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

ORDER II.

Frame of Suit.

Frame of suit.

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

Suit to include the whole claim.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action ; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim.

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

Omission to sue for one of several reliefs.

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

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.

A lets a house to *B* at a yearly rent of Rs. 1,200. The rent for the whole of the years 1935, 1936 and 1937 is due and unpaid. *A* sues *B* in 1938 only for the rent due for 1936. *A* shall not afterwards sue *B* for the rent due for 1935 or 1937.

Joinder of causes of action.

3. (*1*) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(*2*) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

Only certain claims to be joined with claim for recovery of immoveable property.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except—

(*a*) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(*b*) claims for damages for breach of any contract under which the property or any part thereof is held; and

(*c*) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Claims by or against executor, administrator or heir.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Power of Court to order separate trials.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Objections as to misjoinder.

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

ORDER III.

Recognized Agents and Pleaders.

Appearances, etc., may be in person, by recognized

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be

made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf: agent or by pleader.

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

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

(*a*) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(*b*) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

3. (*1*) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs. Service of process on recognized agent.

(*2*) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

4. (*1*) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment. Appointment of pleader.

(*2*) Every appointment shall be filed in Court and shall be deemed to be in force until determined by the discharge of the contract between the pleader and his client or until all proceedings in the suit are ended so far as regards the client.

(*3*) For the purposes of sub-rule (*2*) an application for review of judgment, an application under section 144 or section 152 of this Code, any appeal from any decree or order in the suit, and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the Court in connection with the suit, shall be deemed to be proceedings in the suit.

(*4*) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(*5*) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party unless he has filed in Court a memorandum of appearance signed by himself and stating—

(*a*) the names of the parties to the suit,

(*b*) the name of the party for whom he appears, and

(*c*) the name of the person by whom he is authorized to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.

Service of process on pleader.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Agent to accept service.

6. (*1*) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Appointment to be in writing and to be filed in Court.

(*2*) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

ORDER IV.

Institution of Suits.

Suit to be commenced by plaint.

1. (*1*) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(*2*) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Register of suits.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

ORDER V.

Issue and Service of Summons.

Issue of Summons.

Summons.

1. (*1*) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (*1*) may appear—

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or statement annexed to summons.

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

Court may order defendant or plaintiff to appear in person.

3. (*1*) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits.

4. No party shall be ordered to appear in person unless he resides—

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

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

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit ; and the summons shall contain a direction accordingly :

Provided that in every suit heard by a Court of Small Causes the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Summons to order defendant to produce documents relied on by him.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

On issue of summons for final disposal defendant to be directed to produce his witnesses.

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

Service of Summons.

Delivery or transmission of summons for service.

9. (*1*) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

Mode of service.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of summons shall be made on each defendant.

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

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

13. (*1*) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

Service on agent in charge in suits for immoveable property.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on adult member of defendant's family.

15. Where the defendant is absent, and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Endorsement of time and manner of service.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Examination of serving officer.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit ; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

20. (*1*) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.

(*3*) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Address for service to be filed in Court.

20A. (*1*) Every plaintiff, appellant or applicant, on presenting or on entering an appearance to prosecute a plaint, memorandum of appeal or originating petition or application, shall at the same time file in Court a proceeding stating his address for service.

(*2*) Every defendant or respondent who intends to appear and defend any suit, appeal or originating petition or application shall, on or before the date fixed for his appearance in the summons or notice served on him, file in Court a proceeding stating his address for service.

(*3*) Such address for service shall be within the local limits of the jurisdiction of the Court in which the suit, appeal or petition or application is filed, or of the District Court within whose jurisdiction the party ordinarily resides.

(*4*) Where any party fails to file an address for service, as required by sub-rule (*1*) or sub-rule (*2*), he shall, if a plaintiff, appellant or applicant, be liable to have his suit, appeal, petition or application dismissed for want of prosecution, and, if a defendant, or respondent, be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. Any party may apply for such an order against an opposite party, and the Court may on such application make such order as it thinks just.

(*5*) Where a party is not found at the address given by him for service, and no agent or adult member of his family on whom a notice or process can be served is found at the address, a copy of the notice or process shall be affixed on the outer door or some other conspicuous part of the house or place which has been given as the address for service; and such service shall be deemed to be as effectual as if the notice or process had been personally served on the party.

(*6*) Where a party is represented by an advocate or pleader, notices or processes for service on him shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the address for service given by such party.

(*7*) A party who desires to change the address for service given by him under sub-rule (*1*) or sub-rule (*2*) shall present a verified petition to that effect, and the Court may direct the amendment of the record accordingly. Notice of every such petition shall be given to all other parties to the proceedings.

(*8*) Nothing in this rule shall prevent the Court from directing the service of a notice or process in any other manner if it thinks fit to do so.

Service of summons where defendant resides within jurisdiction of another Court.

21. A summons may be sent by the Court by which it is issued, either by one of its officers or by post, to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Translation of summons for service

21A. When any summons is sent for service by a Court to any Court situated beyond the limits of the Union of Burma, it shall, unless it is written

in English, be accompanied by a translation in English or in the language of the locality in which it is to be served. outside the Union of Burma,

22. Where a summons issued by a Court outside Rangoon is to be served in Rangoon it shall be sent to the [Rangoon City Civil Court][1]: Service within Rangoon of summons issued from outside.

Provided that the Court may, in addition to or in substitution of any other mode of service, send the summons by registered post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by the defendant, or an endorsement by a postal servant that the defendant refused service, may be deemed by the Court issuing the summons to be *primâ facie* proof of service thereof.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto. Duty of Court to which summons is sent.

23A. (*1*) Before retransmitting a summons received from another Court for service, the Court shall either take down the deposition of the peon serving the summons as to the time when, and the manner in which the summons was served; or cause the peon to make an affidavit before the Bailiff, if the Bailiff has been empowered to administer oaths; and shall transmit the same, together with the summons, to the Court whence the summons originally issued. In the case of processes received from outside the Union of Burma the deposition or affidavit of the peon serving the summons, if not recorded in English, shall be translated into English before the summons is returned to the issuing Court. Affidavits of process-servers and identifiers.

(*2*) In the case of processes received from India or Pakistan, if the person on whom the summons is to be served is not personally known to the process-server, an affidavit or deposition by the person who pointed out to the process-server the said person or his ordinary residence or place of business shall also be attached to the summons.

(*3*) When a process is forwarded for service by one Court in the Union of Burma to another Court in the Union of Burma and when the person on whom the process is to be served is not personally known to the process-server, the case, in connection with which the process was issued, shall not be heard *ex parte* without an affidavit or deposition of some person who pointed out to the process-server the person to be served or his ordinary residence.

The onus shall be upon the person at whose instance the summons is issued, either himself or by an agent, to point out to the process-server the person on whom the process is to be served or his ordinary residence or place of business.

(*4*) When the summons has been returned by the process-server under rule 17, a declaration of due service or of failure to serve shall be recorded in form Civil 47 and sent with the summons to the Court by which it was issued.

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[1] Substituted by the Union of Burma (Adaptation of Laws Order, 1948.

Service on defendant in prison.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer-in-charge of the prison for service on the defendant.

Service where defendant resides out of the Union of Burma and has no agent.

25. Where the defendant resides out of the Union of Burma and has no agent in the Union of Burma empowered to accept service, the summons may be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service of summons by registered post on defendant residing in India or Pakistan.

25A. Where the defendant resides in India or Pakistan, the Court may, in addition to or in substitution of any other mode of service, send the summons by registered post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by the defendant, or an endorsement by a postal servant that the defendant refused service, may be deemed by the Court issuing the summons to be *primâ facie* proof of service thereof.

Service in foreign territory through Political Agent or Court.

26. Where—

(*a*) [* * *][1] a Political Agent has been appointed or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(*b*) the President of the Union has, by notification in the Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Service on civil public officer or on servant of railway administration or local authority.

27. Where the defendant is a public officer not belonging to [the Burma][2] military, naval or air forces, or is the servant of a railway administration or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on soldiers, sailors or airmen.

28. Where the defendant is a member of [the Burma][2] military, naval or air forces, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

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[1] Deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Substituted *ibid.*

29. (*1*) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service. **Duty of person to whom summons is delivered or sent for service.**

(*2*) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (*1*) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration. **Substitution of letter for summons.**

(*2*) A letter substituted under sub-rule (*1*) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (*3*), shall be treated in all respects as a summons.

(*3*) A letter so substituted may by sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI.

Pleadings generally.

1. "Pleading" shall mean plaint or written statement. **Pleading.**

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures. **Pleading to state material facts and not evidence.**

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings. **Forms of pleading.**

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. **Particulars to be given where necessary.**

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just. **Further and better statement, or particulars.**

Condition precedent.

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be ; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Departure.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of contract.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Effect of document to be stated.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Malice, knowledge, etc.

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Implied contract or relation.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Pleading to be signed.

14. Every pleading shall be signed by the party and his pleader (if any) : Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the plea ding, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. (*1*) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. **Verification of pleadings.**

(*2*) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(*3*) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. **Striking out pleadings.**

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. **Amendment of pleadings.**

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court. **Failure to amend after order.**

ORDER VII.

Plaint.

1. The plaint shall contain the following particulars :— **Particulars to be contained in plaint.**

(*a*) the name of the Court in which the suit is brought ;

(*b*) the name, description and place of residence of the plaintiff ;

(*c*) the name, description and place of residence of the defendant, so far as they can be ascertained ;

(*d*) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect ;

(*e*) the facts constitutiing the cause of action and when it arose ;

(*f*) the facts showing that the Court has jurisdiction ;

(*g*) the relief which the plaintiff claims ;

(*h*) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished ; and

(*i*) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed : **In money suits.**

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

Where the subject-matter of the suit is immoveable property.

3. Where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers.

When plaintiff sues as representative.

4. Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Defendant's interest and liability to be shown.

5. The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Grounds of exemption from limitation law.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

Relief to be specifically stated.

7. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Relief founded on separate grounds.

8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

Procedure on admitting plaint.

9. (*1*) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it ; and, if the plaint is admitted, shall present on the day on which the plaint is admitted as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

Concise statements.

(*2*) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(*3*) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(*4*) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

Return of plaint.

10. (*1*) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted,

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Procedure on returning plaint.

11. The plaint shall be rejected in the following cases:— Rejection of plaint.

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order. Procedure on rejecting plaint.

13. 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. Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in Plaint.

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint. Production of document on which plaintiff sues.

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(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint. List of other documents.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is. Statement in case of documents not in plaintiff's possession or power.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint. Suits on lost negotiable instruments.

17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall Production of shop-book.

produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification ; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

18. (*1*) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(*2*) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII.

Written Statement and Set-off.

Written statement.

1. The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

New facts must be specially pleaded.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

Denial to be specific.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Evasive denial.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Specific denial

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted, in the pleading of the defendant, shall be taken to be admitted, except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

6. (*1*) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off. **Particulars of set-off to be given in written statement.**

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree. **Effect of set-off.**

(*3*) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations.

(*a*) *A* bequeaths Rs. 2,000 to *B* and appoints *C* his executor and residuary legatee. *B* dies and *D* takes out administration to *B*'s effects. *C* pays Rs. 1,000 as surety for *D*; then *D* sues *C* for the legacy. *C* cannot set-off the debt of Rs. 1,000 against the legacy, for neither *C* nor *D* fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(*b*) *A* dies intestate and in debt to *B*. *C* takes out administration to *A*'s effects and *B* buys part of the effects from *C*. In a suit for the purchase-money by *C* against *B*, the latter cannot set-off the debt against the price, for *C* fills two different characters, one as the vendor to *B*, in which he sues *B*, and the other as representative of *A*.

(*c*) *A* sues *B* on a bill of exchange. *B*, alleges that *A* has wrongfully neglected to insure *B*'s goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(*d*) *A* sues *B* on a bill of exchange for Rs. 500. *B* holds a judgment against *A* for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(*e*) *A* sues *B* for compensation on account of trespass. *B* holds a promissory note for Rs. 1,000 from *A* and claims to set-off that amount against any sum that *A* may recover in the suit. *B* may do so, for, as soon as *A* recovers, both sums are definite pecuniary demands.

(*f*) *A* and *B* sue *C* for Rs. 1,000. *C* cannot set-off a debt due to him by *A* alone.

(*g*) *A* sues *B* and *C* for Rs. 1,000. *B* cannot set-off a debt due to him alone by *A*.

(*h*) *A* owes the partnership firm of *B* and *C* Rs. 1,000. *B* dies, leaving *C* surviving. *A* sues *C* for a debt of Rs. 1,500 due in his separate character. *C* may set-off the debt of Rs. 1,000.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. **Defence or set-off founded on separate grounds.**

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement. **New ground of defence.**

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at **Subsequent pleadings.**

any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

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

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER IX.

Appearance of Parties and Consequences of Non-appearance.

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

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

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

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed :

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

Where neither party appears, suit to be dismissed.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

Plaintiff may bring fresh suit or Court may restore suit to file.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit ; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Dismissal of suit where plaintiff, after summons returned unserved,

5. (*1*) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons, the Court shall make an order that

the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that— fails for three months to apply for fresh summons.

(*a*) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(*b*) such defendant is avoiding service of process, or

(*c*) there is any other sufficient cause for extending the time,

in which case the Court may extend the time for making such application for such period as it thinks fit.

(*2*) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6. (*1*) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then— Procedure when only plaintiff appears.

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte* ; When summons duly served.

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant; When summons not duly served.

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant. When summons served, but not in due time.

(*2*) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance. Proce wh

8. Where the defendant appears and the plaintiff the suit is called on for hearing, the Court shall n be dismissed, unless the defendant admits which case the Court shall pass a decree admission, and, where part only of the the suit so far as it relates to the p

Decree against plaintiff by default bars fresh suit.

9. (*1*) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(*2*) No order shall be made under this rule unless notice of the application has been served on the opposite party.

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

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

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

11. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees or Orders ex parte.

Setting aside decree or order *ex parte* against defendant.

13. In any case in which a decree or order is passed *ex parte* against a defendant, he may apply to the Court by which the decree or order was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree or order as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree or order is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided also that no decree or order shall be set aside under this rule merely on the ground that there has been an irregularity in the service of the summons, if the Court is satisfied that the defendant was aware of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party. No decree to be set aside without notice to opposit party.

ORDER X.

Examination of Parties by the Court.

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials. Ascertainment whether allegations in pleadings are admitted or denied.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party. Oral examination of party, or companion of party.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record. Substance of examination to be written.

4. (*1*) Where the pleader of any party who appears by a pleader, or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day. Consequence of refusal or inability of pleader to answer.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI.

Discovery and Inspection.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not Discovery by interrogatories.

relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular interrogatories to be submitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Costs of interrogatories.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of interrogatories.

4. Interrogatories shall be in form No. 2 in Appendix C, with such variations as circumstances may require.

Corporations.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Objections to interrogatories by answer.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bonâ fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Setting aside and striking out interrogatories.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous ; and any application for this purpose may be made within seven days after service of the interrogatories.

Affidavit in answer, filing.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

Form of affidavit in answer.

9. An affidavit in answer to interrogatories shall be in form No. 3 in Appendix C, with such variations as circumstances may require.

No exception to be taken.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

Order to answer or answer further.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *vivâ voce* examination, as the Court may direct.

Application for discovery of documents.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Affidavit of documents.

13. The affidavit to be made by a party, against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in form No. 5 in Appendix C, with such variations as circumstances may require.

Production of documents.

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of documents referred to in pleadings or affidavits.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Notice to produce.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in form No. 7 in Appendix C, with such variations as circumstances may require.

Time for inspection when notice given.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in form No. 8 in Appendix C, with such variations as circumstances may require.

Order for inspection.

18. (*1*) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(*2*) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies.

19. (*1*) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(*2*) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(*3*) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and

what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature discovery.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Non-compliance with order for discovery.

21. Where any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Using answers to interrogatories at trial.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Order to apply to minors.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

ORDER XII.

Admissions.

Notice of admission of case.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless

the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Form of notice.

3. A notice to admit documents shall be in form No. 9 in Appendix C, with such variations as circumstances may require.

Notice to admit facts.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of admissions.

5. A notice to admit facts shall be in form No. 10 in Appendix C, and admissions of facts shall be in form No. 11 in Appendix C, with such variations as circumstances may require.

Judgment on admissions.

6. (*1*) Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings or otherwise, apply to the Court for such judgment, decree or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may, either upon such application or upon its own motion, give such judgment or make such decree or order as the Court may think just.

(*2*) A decree or order passed under this rule may be executed at any time notwithstanding that other questions between the parties still remain to be decided in the case.

Affidavit of signature.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Notice to produce documents.

8. Notice to produce documents shall be in form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served,

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. Costs.

ORDER XIII.

Production, Impounding and Return of Documents.

1 (*1*) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced. Documentary evidence to be produced at first hearing.

(*2*) The Court shall receive the documents so produced: Provided that they are accompained by an accurate list thereof prepared in such form as the High Court directs.

(*3*) Such lists shall be prepared in form $\frac{\text{Judicial}}{\text{General 23}}$ which will be given free of charge to parties wishing to tender documents in evidence.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing. Effect of non-production of documents.

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

4. (*1*) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:— Endorsements on documents admitted in evidence.

(*a*) the number and title of the suit,

(*b*) the name of the person producing the document,

(*c*) the date on which it was produced, and

(*d*) a statement of its having been so admitted,

and the endorsement shall be signed or initialled by the Judge.

(*2*) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

(*3*) The Court shall mark the documents which are admitted on behalf of the plaintiff or plaintiffs with capital letters in the order in which they are admitted, thus, A, B, C, etc., and the documents admitted on behalf of the defendant with figures, thus, 1, 2, 3, etc.

(*4*) When a number of documents of the same nature are admitted, as, for example, a series of receipts for rent, the whole series shall bear one number or capital letter, a small number or small letter being added to distinguish each paper of the series.

(*5*) Every document on admission shall be entered in a list in form $\frac{\text{Judicial}}{\text{General 25}}$ prepared by the Bench Clerk and signed by the Judge.

Endorsements on copies of admitted entries in books, accounts and records.

5. (*1*) Save in so far as otherwise provided by the Bankers' Books Evidence Act, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(*2*) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(*a*) where the record, book or account is produced on behalf of a party, then by that party, or

(*b*) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(*3*) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it. A note of the return should be made in the list in form $\frac{\text{Judicial}}{\text{General 25}}$.

Endorsements on documents rejected as inadmissible in evidence.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (*a*), (*b*) and (*c*) of rule 4, sub-rule (*1*), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Recording of admitted and return of rejected documents.

7. (*1*) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(*2*) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them, who shall give a receipt for them in column 6 of the list in form $\frac{\text{Judicial}}{\text{General 23}}$.

Court may order any document to be impounded

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of admitted documents.

9. (*1*) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(*a*) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(*b*) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

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

10. (*1*) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(*3*) If the Court thinks fit to send for the record, it shall do so by sending a formal proceeding to the Court whose record is required. No summons to produce any record shall be issued to any record-keeper, chief clerk or official of any Court.

(*4*) Whenever a Judge sends for the record of another suit or case, or other official papers, and uses any part of such record or papers as evidence in a trial before him, he shall direct that an authenticated copy of the part so used shall be put up with the trial record, and shall further direct at the expense of which party such copy shall be made.

(5) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Exhibits not to be filed on the record until after termination of trial.

10A. Exhibits, with their accompanying lists, shall not be filed with the record until after the termination of the trial.

Withdrawal of exhibit after judgment.

10B. If any exhibit included in the index of contents of the trial record is withdrawn after judgment, the fact should be noted in the column of remarks of the index, and it should be stated whether a copy has been substituted or not.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIV.

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

Framing of issues.

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (*a*) issues of fact, (*b*) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Issues of law and of fact.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials from which issues may be framed.

3. The Court may frame the issues from all or any of the following materials:—

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

(*b*) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

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

Court may examine witnesses or documents before framing issues.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Power to amend, and strike out, issues.

5. (*1*) 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 matters in controversy between the parties shall be so made or framed.

(*2*) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

(*a*) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to liability specified in the agreement;

(*b*) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(*c*) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

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

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

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

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XV.

Disposal of the Suit at the first hearing.

Parties not at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several defendants not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

Parties at issue.

3. (*1*) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

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

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Failure to produce evidence.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI.

Summoning and Attendance of Witnesses.

Summons to attend to give evidence or produce documents.

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

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

2. (*1*) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance:

Provided that in cases to which the Government or a local authority is a party—

(*a*) no payment into Court will be required for the travelling and other expenses of a servant of the Government or of a local authority who may be required to be summoned at the instance of the Government or the local authority respectively to give evidence in his official capacity;

(*b*) the amount to be paid into Court for the travelling and other expenses of a servant of the Government or of a local authority whose salary exceeds [Rs 30][1] and who may be required to be summoned at the instance of a party other than the Government or the local authority respectively to give evidence in his official capacity in a Court situated at a distance of more than five miles from his head quarters shall be equivalent to the travelling and halting allowances admissible under the rules applicable to him in his official capacity.

Experts.

(*2*) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses.

[2](*3*) Subject to the provisions of sub-rule (2), travelling and other expenses of witnesses, in Courts subordinate to the High Court other that the Rangoon City Civil Court, shall be payable on the following scale:—

(i) *Ordinary Labouring Classes.*—The actual fare to and from the Court by the lowest class for journeys which were or could have been performed by public conveyance as defined in Burma Travelling Allowance Rule 6 (12); or where the journey could not have been performed by public conveyance, actual travelling expenses reasonably incurred not exceeding Rs. 2-8-0 a day by boat and annas four a mile by road; and an allowance of Rs. 1-2-0 for each day's absence from home.

(ii) *Petty Village Officers.*—The same rates as above for journeys which were or could have been performed by public conveyance as defined in Burma Travelling Allowance Rule 6 (12), or actual travelling expenses reasonably incurred not exceeding Rs. 2-8-0 a day by boat and annas four a mile by road; and an allowance of Rs. 1-6-0 for each day's absence from home.

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[1] Substituted for "Rs 10" by High Court Notification No. 2 (Schedule), dated the 8th October 1948.

[2] Sub-rule (3) of rule 2 was substituted by High Court Notification No. 2 (Schedule), dated the 8th October 1948.

(iii) *Persons of higher ranks of life, such as Clerks, Tradespeople, Village Headmen, Headmen of Circles and Members of Circle Boards.*—Third class fare to and from the Court for journeys which were or could have been performed by public conveyance as defined in Burma Travelling Allowance Rule 6 (12); or where the journey could not have been performed by public conveyance, actual travelling expenses reasonably incurred not exceeding Rs. 5-0-0 a day by boat and annas four a mile by road; and an allowance not to exceed, except in special cases, Rs. 2 for each day's absence from home :

Provided that second class fare by public conveyance may be paid in any case in which the Court is satisfied that the witness is a person who ordinarily travels by second class and did actually travel by that class. The Court should certify that it is so satisfied in all cases in which second class fare is paid.

(iv) *Members of District Councils, persons paying income-tax on Rs. 3,000 per annum or more, and other persons of equal or superior status.*—The actual travelling expenses reasonably incurred to and from the Court with an allowance according to circumstances not to exceed, except in very special cases, Rs. 4 for each day's absence from home.

(v) *Witnesses following any profession, such as Medicine or Law.*—A special allowance according to circumstances, which is not to exceed Rs. 6, unless the witness is called to give expert evidence. In determining the amount payable under this rule the Court may, in the case of any person summoned to give evidence as an expert allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(vi) *Lodging Allowance.*—In addition to the above, a lodging allowance not exceeding, except in special cases Rs. 1-8-0 for persons in class (iii) and Rs. 3 for persons in classes (iv) and (v) may be allowed for each night necessarily spent away from home if the Court is satisfied that the witness had to pay for his night's lodging. When an amount exceeding this scale is sanctioned as a special case, it shall not exceed the actual amount spent and the Court must be satisfied that such expenditure was necessary :

Provided that—

(i) a servant of the Government or of a local authority whose salary exceeds Rs. 30 per mensem giving evidence in his official capacity in a suit to which the Government or the local authority respectively is a party—

(*a*) when giving evidence at a place more than five miles from his headquarters, shall not receive anything under these rules, but shall be given a certificate of attendance ;

(*b*) when giving evidence at a place not more than five miles from his headquarters, shall, in cases where the Court considers it necessary, receive under these rules actual travelling expenses, but shall not receive subsistence, special or expert allowances ;

(ii) a servant of the Government or of a local authority whose salary does not exceed Rs. 30 per mensem, giving evidence in his official capacity, shall receive his expenses from the Court.

[NOTE.—When the journey has to be performed partly by rail or steam-boat and partly by road or boat, the fare shall be paid in respect of the former and the mileage or boat allowance in respect of the latter part of the journey.]

Railway servants summoned by a civil Court as witnesses, and travelling by rail to attend the Court, shall be paid the railway fare to which they are entitled under the rules for the payment of witnesses without regard to the fact that they may have travelled under a pass and not on actual payment of the fares.

Tender of expenses to witness.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally. This rule does not apply where the person summoned is a servant of the Government or of a local authority summoned to give evidence in his official capacity in a case to which the Government or the local authority respectively is a party.

Procedure where insufficient sum paid in.

4. (*1*) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

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

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes

such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Summons how served.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule:

Provided that, at the request of a party or his pleader, summons for service on a witness or witnesses, whose attendance is required by such party, may be delivered to such party or his pleader for service by a person employed by such party or his pleader, and the rules in Order V as to service and proof of service shall apply in such case as if the person employed by such party or his pleader to effect service were the officer of the Court whose duty it is to effect service of summons.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required. Where the person summoned is a public officer or servant of a railway administration, sufficient time shall also be allowed in order to give the witness an opportunity of communicating with his departmental superior, so as to arrange for the discharge of his duties during his temporary absence from his post.

Procedure where witness fails to comply with summons.

10. (*1*) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(*3*) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness appears, attachment may be withdrawn.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(*a*) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(*b*) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

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

Mode of attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

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

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

16. (*1*) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(*2*) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application of rules 10 to 13.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

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

19. No one shall be ordered to attend in person to give evidence unless he resides—

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

Consequence of refusal of party to give evidence when called on by Court.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Rules as to witnesses to apply to parties summoned.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

ORDER XVII.

Adjournments.

Court may grant time and adjourn hearing.

1. (*1*) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment: Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit. Procedure if parties fail to appear on day fixed.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith. Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII.

Hearing of the Suit and Examination of Witnesses.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin. Right to begin.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. Statement and production of evidence.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case:

Provided that the Court may, in its discretion, call upon the other party to proceed under this sub-rule before the evidence for the party having the right to begin is complete if it considers that the other party will not be prejudiced by so proceeding and that unnecessary inconvenience and delay will thereby be avoided.

(3) The party beginning may then reply generally on the whole case.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence Evidence where several issues.

produced by the other party ; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning ; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

How evidence shall be taken in appealable cases.

5. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing in the language of the Court or in English by or in the presence and under the direction and supervision 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 or translated to the witness by such person as the Judge may direct, provided that the Judge may, if he thinks fit, require the evidence to be read over in his own presence.

Such person shall, after reading over the deposition to the witness, append a certificate at the foot of the deposition form as follows:—

$\frac{\text{Read over}}{\text{Interpreted}}$ by me in Burmese or (as the case may be) and acknowledged correct.

(Signature.)

Interpreter or Clerk.

The Judge shall, if necessary, correct the deposition and sign it.

When deposition to be interpreted.

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

Payment of interpreters where no interpreters paid by Government.

6A. Where there are no interpreters paid by Government, and it is found necessary to employ an interpreter in a civil case, he shall be paid such fee, ordinarily not exceeding [Rs. 4][1] per diem, as the Court may fix. The fee shall be advanced by the party at whose instance the interpreter is required, and shall be treated as costs in the case. All payment of interpreters' fees shall be made through the Court and duly entered in Bailiff's Register II.

Evidence under section 138.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. * * * *

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[1]. Substituted for " Rs. 2 " by High Court Notification No. 4 (Schedule), dated the 28th April 1952.

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down. When evidence may be taken in English.

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing. Any particular question and answer may be taken down.

11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon. Questions objected to and allowed by Court.

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

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length ; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record. Memorandum of evidence in unappealable cases.

14. (*1*) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court. Judge unable to make such memorandum to record reasons of his inability.

(*2*) Every memorandum so made shall form part of the record.

15. (*1*) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it. Power to deal with evidence taken before another Judge.

(*2*) The provisions of sub-rule (*1*) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

16. (*1*) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided. Power to examine witness immediately.

(*2*) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient of the day fixed for the examination shall be given to the parties.

(*3*) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Court may recall and examine witness.

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Power of Court to inspect.

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

ORDER XIX.

Affidavits.

Power to order any point to be proved by affidavit.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of deponent for cross-examination.

2. (*1*) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(*2*) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

Matters to which affidavits shall be confined.

3. (*1*) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted provided that the grounds thereof are stated.

(*2*) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

Mode of taking oath or affirmation by declarant of affidavit.

4. The officer administering the oath to the declarant of an affidavit should first make the declarant take the oath or affirmation. Then he should make the declarant repeat the whole of the statement written in the affidavit as coming from him. Then the declarant should sign the affidavit, and lastly the officer administering the oath should sign and date it.

5. Every affidavit to be used in a Court of Justice should be entitled "In the Court of at ," naming the Court. If there is a case in Court the affidavit in support of or in opposition to an application respecting it must also be entitled "In the case of ".

Form of affidavit.

If there is no case in Court, the affidavit should be entitled "In the matter of the petition of ".

6. Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.

Mode of writing affidavit.

7. Every person, other than a plaintiff or defendant in a suit in which the application is made, making an affidavit, shall be described in such a manner as will serve to identify him clearly, that is to say, by the statement of his full name the name of his father, his profession or trade, and the place of his residence.

Address of person making affidavit.

8. When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words "I affirm" (or "make oath") "and say".

Mode of speaking by declarant to fact within his own knowledge.

9. When the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant must use the expression "I am informed" (and, if such be the case, should add "and verily believe it to be true"), or he may state the source from which he received such information. When the statement rests on facts disclosed in documents or copies of documents procured from any Court of Justice or other source, the deponent shall state what is the source from which they were procured and his information or belief as to the truth of the facts disclosed in such documents.

Mode of speaking by declarant to fact not within his own knowledge.

10. Every person making an affidavit, if not personally known to the Commissioner, shall be identified to the Commissioner by some person known to him, and the Commissioner shall certify at the foot of the petition, or of the affidavit (as the case may be), the name and description of him by whom the identification is made, as well as the time and place of the identification and of the making of the affidavit.

Identification of person making affidavit not personally known to Commissioner.

11. If any person making an affidavit is ignorant of the language in which it is written, or appears to the Commissioner to be illiterate or not fully to understand the contents of the affidavit, the Commissioner shall cause the affidavit to be read and explained to him in a language which he understands. If it is necessary to employ an interpreter for this purpose, the interpreter shall be sworn to interpret truly. When an affidavit is read and explained as herein provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read and explained, and that the

Interpretation of affidavit when person making it is ignorant of the language in which it is written.

declarant seemed perfectly to understand the same at the time of making the affidavit. When an interpreter is employed the Commissioner shall state in his certificate the name of the interpreter, and the fact that he was sworn to interpret truly.

Administration of oath or affirmation.

12. In administering oaths and affirmations to declarants the Commissioner shall be guided by the provisions of the Oaths Act.

ORDER XX.

Judgment and Decree.

Judgment when pronounced.

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor.

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

Judgment to be signed.

3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

Judgments of Small Cause Courts.

4. (*1*) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

Judgments of other Courts.

(*2*) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to state its decision on each issue.

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

Contents of decree.

6. (*1*) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(*2*) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(*3*) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

Date of decree.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Procedure where Judge has vacated office before signing decree.

8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Decree for recovery of immoveable property.

9. Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of moveable property.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree may direct payment by instalments.

11. (*1*) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Order, after decree, for payment by instalments.

(*2*) After the passing of any such decree the Court may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments, on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Decree for possession and mesne profits.

12. (*1*) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

(*a*) for the possession of the property ;

(*b*) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits ;

(*c*) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(*i*) the delivery of possession to the decree-holder,

(*ii*) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(*iii*) the expiration of three years from the date of the decree,

whichever event first occurs.

(*2*) Where an inquiry is directed under clause (*b*) or clause (*c*), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Decree in administration suit.

13. (*1*) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(*2*) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent ; and all persons who in any such case would be entitled to be paid out of such property may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Decree in pre-emption suit.

14. (*1*) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

(*a*) specify a day on or before which the purchase-money shall be so paid, and

(*b*) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (*a*), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(*2*) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct,—

(*a*) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (*1*) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect ; and

(*b*) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Decree in suit for dissolution of partnership.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing

the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for account between principal and agent.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Special directions as to accounts.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit for partition of property or separate possession of a share therein.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54 ;

(2) if and in so far as such decree relates to other immoveable property, or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Decree when set-off is allowed.

19. (*1*) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from decree relating to set-off.

(*2*) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(*3*) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified copies of judgment and decree to be furnished.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

Certificate to be issued to Land Records Department when interests in land are affected.

21. As soon as the decree of a Court of first instance in a suit relating to land in a district in which there is a Land Records establishment has become final, or if the decree has been appealed against, when the decree in appeal has become final, and the interest of any party to the suit in any land included in the survey has been affected thereby, the Court of first instance shall certify the nature and extent of such change of interest in each plot of land in suit to the Superintendent of Land Records of the district in which the land is situate. A copy of the certificate in every such case should also be sent to the Sub-Registrar within whose sub-district the land or any part thereof is situate.

Form of certificate.

22. The certificates shall be in the prescribed form, and shall be signed by the presiding officer of the Court.

ORDER XXI.

Execution of Decrees and Orders.

Payment under Decree.

Modes of paying money under decree.

1. (*1*) All money payable under a decree shall be paid as follows, namely :—

(*a*) into the Court whose duty it is to execute the decree ; or

(*b*) out of Court to the decree-holder ; or

(*c*) otherwise as the Court which made the decree directs.

(*2*) Where any payment is made under clause (*a*) of sub-rule (*1*), notice of such payment shall be given to the decree-holder.

Payment out of Court to decree-holder.

2. (*1*) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(*2*) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified, and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(*3*) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

Courts executing Decrees.

Lands situate in more than one jurisdiction.

3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Transfer to Court of Small Causes.

4. Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of a Court of Small Causes and the Court which passed it wishes it to be executed in Rangoon, such Court may send to the [Rangoon City Civil Court][1] the copies and certificates mentioned in rule 6; and such Court [* *][2] shall thereupon execute the decree as if it had been passed by itself.

Mode of transfer.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed:

Provided that where the Court to which the decree is sent for execution is presided over by the same Judge as the Court which passed the decree such transfer may be effected by recording a formal order of transfer in the diary of the execution proceedings.

Procedure where Court desires that its own decree shall be executed by another Court.

6. The Court sending a decree for execution shall send—

(*a*) a copy of the decree;

(*b*) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(*c*) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect:

Provided that where a transfer is effected under the proviso to rule 5 it shall not be necessary to send the above documents.

Court receiving copies of decree, etc., to file same without proof.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court whose pecuniary jurisdiction is not less than the amount of the decree.

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted *ibid.*

Execution by High Court of decree transferred by other Court.

9. Where the Court to which the decree is sent for execution is the High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for Execution.

Application for execution.

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

At the time of presenting the application for execution or at the time of admission thereof the holder of a decree may, if he wishes, deposit in Court the fees requisite for all necessary proceedings in the execution.

Procedure when no application is made to execute transferred decree.

10A. If no application is made by the decree-holder within six months of the date of the receipt of the papers, the Court shall return them to the Court which passed the decree with a certificate stating the circumstances as prescribed by section 41.

Oral application.

11. (*1*) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant, if he is within the precincts of the Court.

Written application.

(*2*) Save as otherwise provided by sub-rule (*1*), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :—

(*a*) the number of the suit ;

(*b*) the names of the parties ;

(*c*) the date of the decree ;

(*d*) whether any appeal has been preferred from the decree ;

(*e*) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;

(*f*) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results ;

(*g*) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed ;

(*h*) the amount of the costs (if any) awarded ;

(*i*) the name of the person against whom execution of the decree is sought ; and

(*j*) the mode in which the assistance of the Court is required, whether—

(i) by the delivery of any property specifically decreed ;

(ii) by the attachment and sale, or by the sale without attachment, of any property ;

(iii) by the arrest and detention in prison of any person ;

(iv) by the appointment of a receiver ;

(v) otherwise, as the nature of the relief granted may require.

(*3*) The Court to which an application is made under sub-rule (*2*) may require the applicant to produce a certified copy of the decree.

Application for attachment of moveable property not in judgment-debtor's possession.

12. Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of immoveable property to contain certain particulars.

13. (*1*) When an application is made for execution of a decree relating to immoveable property included within the cadastral or town survey and the decree does not contain a plan of the property, or for execution of a decree by the attachment and sale of such property, the application must be accompanied by a certified extract from the latest *kwin* or town map, with the boundary of the land in question marked with a distinctive colour. The particulars specified in the annexed instructions, which have been issued regarding the filling up of forms of process concerning immoveable property, must also be furnished so far as they are not given in the plan. In the case of other immoveable property a plan is not required, but such of the particulars in the annexed instructions as can be given must be supplied :—

(i) If the property to be sold is agricultural land which has been cadastrally surveyed and of which survey maps exist, the area, *kwin* number, latest holding number (if different kinds of holding, *e.g.*, rice land and garden holdings, are numbered in different series, the kind of holding must be stated), field numbers (if the property does not coincide with one complete holding), year of *kwin* map from which the holding number is taken, and revenue last assessed upon the land, must be given.

(ii) In the case of other agricultural land, the area and village-tract within which it falls, distance and direction from nearest town or village, and boundaries should be specified.

(iii) In the case of land in large towns the area, block or quarter, name or number, the lot number (if there are separate series of lots, the series should be stated, and where the land forms part only of a lot particulars regarding that part), the holding number in the latest town survey map, if any, and year of the

map, the rent or revenue last assessed on the land must be given.

(iv) In the case of buildings situated in a large town when the land on which such buildings stand is not affected, the name or number of the street, or, if the street has neither name nor number, the quarter or block name or number, the number of the building in the street, or if it has no number, the lot number, must be given.

(v) In the case of immoveable property situated in a small town or village, such of the particulars in paragraphs (iii) and (iv) above as can be given should be given.

(vi) The purpose to which land or buildings are put, the material and age of buildings, all incumbrances and municipal taxes should be stated.

(vii) The judgment-debtor's share or interest in the property should be specified.

(2) The cost of the certified extract shall be reckoned in the costs of the application.

Power to require certified extract from Collector's register in certain cases

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Application for execution by joint decree-holder.

15. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application for execution by transferee of decree.

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor; and, unless an affidavit by the transferor admitting the transfer is

filed with the application, the decree shall not be executed until the Court has heard his objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on receiving application for execution of decree.

17. (*1*) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (*2*), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with ; and, if they have not been complied with, the Court may reject the application if the defect is not remedied within a time to be fixed by it.

(*2*) Where an application is amended under the provisions of sub-rule (*1*), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(*3*) Every amendment made under this rule shall be signed or initialled by the Judge.

(*4*) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Execution in case of cross-decrees.

18. (*1*) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(*a*) if the two sums are equal, satisfaction shall be entered upon both decrees ; and

(*b*) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree for the smaller sum.

(*2*) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(*3*) This rule shall not be deemed to apply unless—

(*a*) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits ; and

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

(*4*) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations.

(*a*) *A* holds a decree against *B* for Rs. 1,000. *B* holds a decree against *A* for the payment of Rs. 1,000 in case *A* fails to deliver certain goods at a future day. *B* cannot treat his decree as a cross-decree under this rule.

(*b*) *A* and *B*, co-plaintiffs, obtain a decree for Rs. 1,000 against *C*, and *C* obtains a decree for Rs. 1,000 against *B*. *C* cannot treat his decree as a cross-decree under this rule.

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

(*d*) *A*, *B*, *C*, *D* and *E* are jointly and severally liable for Rs. 1,000 under a decree obtained by *F*. *A* obtains a decree for Rs. 100 against *F* singly and applies for execution to the Court in which the joint-decree is being executed. *F* may treat his joint-decree as a cross-decree under this rule.

Execution in case of cross-claims under same decree.

19. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

(*a*) if the two sums are equal, satisfaction for both shall be entered upon the decree; and,

(*b*) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Cross-decrees and cross-claims in mortgage suits.

20. The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Simultaneous execution.

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

Notice to show cause against execution in certain cases.

22. (*1*) Where an application for execution is made—

(*a*) more than three years after the date of the decree, or

(*b*) against the legal representative of a party to the decree, or where an application is made for execution of a decree filed under the provisions of section 44A,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than three years having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(*2*) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice

thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Procedure after issue of notice.

23. (*1*) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

Process for Execution.

Process for execution.

24. (*1*) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed, and a day shall also be specified on or before which it shall be returned to the Court.

Endorsement on process.

25. (*1*) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in which, it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Stay of Execution.

When Court may stay execution.

26. (*1*) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

Power to require security from, or impose conditions upon, judgment-debtor.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court shall, unless sufficient cause is shown to the contrary, require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment-debtor discharged.

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

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

29. Where a suit is pending in any Court against the holder of a decree of such Court on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided.

Mode of Execution.

Decree for payment of money.

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Decree for specific moveable property.

31. (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as

an alternative to delivery of moveable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(*3*) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

(*4*) The Court may, on application, extend the period of three months mentioned in sub-rules (*2*) and (*3*) to such period, not exceeding six months in the whole, as it may think fit.

Decree for specific performance, for restitution of conjugal rights, or for an injunction.

32. (*1*) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decrce may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction, by his detention in the civil prison, or by the attachment of his property, or by both.

(*2*) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(*3*) Where any attachment under sub-rule (*1*) or sub-rule (*2*) has remained in force for three months or for such further period, not exceeding one year in the whole, as may be fixed by the Court on the application of the judgment-debtor, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold ; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(*4*) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(*5*) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Illustration.

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to *B*. *A*, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by *B* and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of *A*'s property would adequately compensate *B* for the depreciation in the value of his mansion. *B* may apply to the Court to remove the building and may recover the cost of such removal from *A* in the execution proceedings.

Discretion of Court in executing decrees for restitution of conjugal rights.

33. (*1*) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree against a husband for the restitution of conjugal rights or at any time afterwards, may order that the decree shall be executed in the manner provided in this rule.

(*2*) Where the Court has made an order under sub-rule (*1*) it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(*3*) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part, as it may think just.

(*4*) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

Decree for execution of document, or endorsement of negotiable instrument.

34. (*1*) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(*3*) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(*4*) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(*5*) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :—

"C. D., Judge of the Court of (*or as the case may be*), for A.B., in a suit by E.F. against A.B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(*6*) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

Decree for immoveable property.

35. (*1*) Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(*2*) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(*3*) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Decree for delivery of immoveable property when in occupancy of tenant.

36. Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Arrest and Detention in the Civil Prison.

Notice to judgment-debtor to show cause against detention in prison.

37. (*1*) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Warrant for arrest to direct judgment-debtor to be brought up.

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Cost of conveyance of civil prisoners to be borne by Court.

38A. The actual cost of conveyance of a civil prisoner shall be borne by the Court ordering his arrest or requiring his attendance at Court, as the case may be, and shall not be charged to the judgment-creditor.

Subsistence allowance.

39. (*1*) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(*2*) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(*2a*) When a civil prisoner is kept in confinement at the instance of more than one decree-holder, he shall only receive the same allowance for his subsistence as if he were detained in confinement upon the application of one decree-holder. Each decree-holder shall, however, pay the full allowance for subsistence, and when the debtor is released the balance shall be divided rateably among the decree-holders and paid to them.

(*3*) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payment in advance before the first day of each month.

(*4*) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Proceedings on appearance of judgment-debtor in obedience to

40. (*1*) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be

produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. notice or after arrest.

(2) Pending the conclusion of the inquiry under sub-rule (*1*) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(*3*) Upon the conclusion of the inquiry under sub-rule (*1*) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

Provided that, in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(*4*) A judgment-debtor released under this rule may be re-arrested.

(*5*) When the Court does not make an order of detention under sub-rule (*3*), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

Attachment of Property.

41. Where a decree is for the payment of money, the decree-holder may apply to the Court for an order that— Examination of judgment-debtor as to his property.

(*a*) the judgment-debtor, or

(*b*) in the case of a corporation, any officer thereof, or

(*c*) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree ; and the Court may make an order for the attendance and examination of such judgment-debtor or officer or other person, and for the production of any books or documents.

42. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.

43. Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof :

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment of agricultural produce.

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

(*a*) where such produce is a growing crop, on the land on which such crop has grown, or

(*b*) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides, or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain ; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Provisions as to agricultural produce under attachment.

45. (*1*) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(*2*) Subject to such conditions as may be imposed by the Court in this behalf, either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it ; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(*3*) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(*4*) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(*5*) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Deposit, disbursement and refund of watching-fees for attached moveable property.

45A. (*1*) Before issuing a warrant for the attachment of moveable property which it will be necessary to place in charge of one or more peons, permanent or temporary, the Court shall satisfy itself that the attaching decree-holder has produced a receipt in form 15A, Appendix E, from the Bailiff that he has paid in cash as process-fees under rule 17 (1) (*c*) (ii) (2) of the Process Fees Rules not less than Rs. 10 for each person who the Bailiff considers should be employed.

(*2*) In sending the warrant for execution to the Bailiff the Court clerk shall certify at the foot of the warrant that the receipt granted by the Bailiff for the necessary fees has been filed in the record ; the Bailiff shall then endorse on the warrant the name of the process-server to whom it is issued for execution. If a temporary peon is employed for the custody of the attached property, the process-server shall state in his report of the attachment the name of the temporary peon employed and the date from which his duties commenced.

(*3*) At the time of granting the receipt in form 15A, for payments made by the decree-holder as required by sub-rule (*1*), the Bailiff shall state in the lower portion of the form the date on which the fees paid will be exhausted, warning the decree-holder that the property will not be kept under attachment after that date, unless further fees are paid before that date.

If the further fees required are not paid, the attachment shall cease as soon as the period for which fees have already been paid expires. In such a case the amount paid prior to the cessation of the attachment shall not be allowed to the attaching decree-holder as costs.

(*4*) The payment of fees under sub-rule (*1*) shall be made in cash to the Bailiff and the amount shall be at once entered in Bailiff's Register No. II. The Court clerk shall on receipt of the Bailiff's acknowledgment (form 15A) file it in the record and make an entry to that effect in the diary.

(*5*) Temporary peons employed for the custody of attached property shall be remunerated at the rate provided for in rule 15 of the rules regarding process-serving establishments, provided that the total remuneration disbursed shall in no case exceed the amount of the process-fees actually paid under the foregoing sub-rules.

Permanent peons shall be presumed to be remunerated at the same rate as temporary peons, but if the services of the former are utilized the fees paid shall be credited direct into the Treasury to "Process-Servers' Fees"—"XVI-A—Law and Justice"—"Courts of Law"—"Court Fees realized in cash".

(*6*) The remuneration of temporary peons employed to take charge of attached property shall be paid direct by the Bailiff to them on the order of the Judge.

Before passing such order, the Judge must verify the name of the payee from the report of the attachment and must satisfy himself that the amount

proposed to be paid does not exceed the amount of the fees deposited with the Bailiff, or, if any payments have already been made in the case, of the unexpended balance of such deposits, and that all amounts previously drawn have been disbursed to the proper persons.

(*7*) When the order has been signed by the Judge, the money shall be disbursed by the Bailiff at once to the peon or peons concerned, whose acknowledgment of receipt shall be taken in Bailiff's Register II. If, however, the amount has been transferred to Bailiff's Register I, the Bailiff shall draw the amount necessary for payment from the Treasury as if it were a re-payment of deposit and shall then disburse the amount due to the peon or peons concerned, whose acknowledgment of receipt shall be taken in Bailiff's Register I.

(*8*) When the attachment is brought to a close or has not been effected, if the Judge finds, at the time of calculating the amount paid in and properly chargeable for peons, that the total amount of the fees actually paid under sub-rules (*1*) and (*3*) exceeds the total amount that is chargeable for peons, including the amount of the last payment, he shall direct that the excess be refunded to the payer.

(*9*) The Judge shall, in all cases in which a refund is to be made, issue to the Bailiff an order, a copy of which shall be placed on the record, to make such refund.

If a sufficient portion of the amount paid by the decree-holder to pay such refund is in the hands of the Bailiff that officer shall make the refund in the ordinary way prescribed in his Register II for re-payments. If the amount has been credited into the Treasury he shall prepare a bill for the amount to be refunded in the prescribed Treasury form and shall lay it before the Judge for signature with the record of the case in the same way as a bill for the remuneration of temporary peons. Before signing the refund order the Judge must satisfy himself that the amount is available for refund by examining Bailiff's Register I and the record. The bill when signed by the Judge will be given to the payee, with instructions to present it for payment at the Treasury or Sub-treasury.

Charges incurred in connection with the custody and conveyance of attached moveable property and feeding and tending of live-stock.

45B. (*1*) In addition to the fees payable before a warrant issues for the attachment of moveable property under rule 45A, the Bailiff shall require the attaching decree-holder to deposit a sum of money sufficient to cover the cost of attachment other than the pay of peons employed to take charge of it, for such period as the Bailiff may think fit.

Explanation.—The costs in question might be, for example, (*a*) rent of building in which to store attached furniture, (*b*) costs of conveying the attached property from the place of attachment to Court or to a secure place of custody, (*c*) cost of feeding and tending live-stock, (*d*) cost of proceeding to the place of attachment to sell perishable property.

(*2*) If the attaching decree-holder fails to comply with the Bailiff's requisition, the warrant shall not be issued.

(*3*) Sums thus deposited shall be entered in the Bailiff's Registers I and II and any re-payment thereof shall be made according to existing orders. A receipt for such sum shall be granted by the Bailiff in form 15A, Appendix E.

(*4*) In the receipt given for the sums deposited the Bailiff shall state the period for which such sums will last, and if the attaching decree-holder does not deposit a further sum before the expiry of such period, the attachment shall cease when the sum deposited is exhausted.

(*5*) The officer actually attaching the property shall, unless the Court otherwise directs, give the debtor, or, in his absence, any adult member of his family who may be present, the option of having the attached property kept on his premises or elsewhere, on condition that a suitable place for its safe custody is duly provided. The option so given may be subsequently withdrawn by order of the Court.

Where the attached property consists of cattle these may be employed, so far as is consistent with rule 43, in agricultural operations.

(*6*) If no such suitable place be provided or if the Court directs that the property shall be removed, the officer shall remove the property to the Court, unless the property attached is a growing crop, when rule 45 applies. Whenever live-stock is kept at the place where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it under the supervision of the attaching officer.

(*7*) Whenever property is attached, the officer shall forthwith report to the Court and shall with his report forward an accurate list of the property seized.

(*8*) If the judgment-debtor shall give his consent in writing to the sale of property without awaiting the expiry of the term prescribed in rule 68, the officer shall receive the written consent and forward it without delay to the Court for its orders.

(*9*) When property is removed to the Court it shall be kept by the Bailiff, on his own sole responsibility, in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept on the Court premises or in the personal custody of the Bailiff he may, subject to the approval of the Court, make such arrangement for its safe custody under his own supervision as may be most convenient and economical.

(*10*) If there be a cattle-pound maintained by Government or any local authority in or near the place where the Court is held, the Bailiff shall be at liberty to place in it such attached live-stock as can be properly kept there, in which case the pound-keeper will be responsible for the property to the Bailiff and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

(*11*) Whenever property is attached, and any person other than the judgment-debtor shall claim the same or any part of it, the officer shall nevertheless, unless the decree-holder desires to withdraw the attachment of the property so claimed, remain in possession and shall direct the claimant to prefer his claim to the Court.

(*12*) If the decree-holder shall withdraw an attachment or if it shall cease under sub-rule (*2*) or (*4*), the Bailiff's officer shall inform the debtor or, in his absence, an adult member of his family that the property is at his disposal.

(*13*) If any portion of the deposit made under sub-rule (*1*) or (*4*) remains unexpended it shall be refunded to the decree-holder in the manner prescribed for such refunds in sub-rule (*9*) of rule 45A. Any difference between the cost of attachment of moveable property (other than the costs referred to in rule 45A) and the sums deposited by the attaching decree-holder shall, unless the difference is due to the fault of the Bailiff, be recovered from the sale proceeds of the attached property, if any, and if there are no sale proceeds, from the attaching decree-holder on the application of the Bailiff. If there is still a deficiency, the amount shall be paid by Government.

Attachment of debt, share and other property not in possession of judgment-debtor.

46. (*1*) In the case of—

(*a*) a debt not secured by a negotiable instrument,

(*b*) a share in the capital of a corporation,

(*c*) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(*2*) A copy of such order shall be affixed on some conspicuous part of the Court-house and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

Attachment of share in moveables.

47. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of salary or allowances of public officer

48. (*1*) Where the property to be attached is the salary or allowances of a public officer or of a servant of a railway administration or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within

the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct ; and, upon notice of the order to such officer as the President of the Union may, by notification in the Gazette, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

or servant of railway administration or local authority.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the President of the Union in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the railway administration or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of the revenues of the Union of Burma or the funds of a railway administration carrying on business in any part of the Union of Burma or local authority in the Union of Burma ; and the Government or the railway administration or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

Attachment of partnership property.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within the Union of Burma.

(*5*) Every application made by any partner of the judgment-debtor under sub-rule (*3*) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within the Union of Burma.

(*6*) Service under sub-rule (*4*) or sub-rule (*5*) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Execution of decree against firm.

50. (*1*) Where a decree has been passed against a firm, execution may be granted—

(*a*) against any property of the partnership;

(*b*) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c*) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to affect the provisions of the Partnership Act as respects the liability of a minor partner.

(*2*) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (*1*), clauses (*b*) and (*c*), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(*3*) Where the liability of any person has been tried and determined under sub-rule (*2*), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(*4*) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

Attachment of negotiable instruments.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be brought into Court and held subject to the further orders of the Court.

Attachment of property in custody of Court or public officer.

52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming

payable thereon, may be held subject to the further orders of the Court from which the notice is issued :

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Attachment of decrees.

53. (*1*) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(*a*) if the decrees were passed by the same Court, then by order of such Court, and

(*b*) if the decree sought to be attached was passed by another Court, then by the issue to such other Court and to any Court to which it may have been transferred for execution of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of the decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute the attached decree with the consent of the said decree-holder expressed in writing or with the permission of the attaching Court.

(*2*) Where a Court makes an order under clause (*a*) of sub-rule (*1*), or receives an application under sub-head (ii) of clause (*b*) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(*3*) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (*1*) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(*4*) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (*1*), the attachment shall be made by a notice by the Court which passed the decree sought to be executed to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way ; and where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached ; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order with the knowledge thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Attachment of immoveable property.

54. (*1*) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

(*3*) The order of attachment shall take effect, as against transferees without consideration from the judgment-debtor from the date of the order of attachment, and as against all other persons from the date on which they respectively had knowledge of the order of attachment, or the date on which the order was duly proclaimed under sub-rule (*2*), whichever is the earlier.

Removal of attachment after satisfaction of decree.

55. Where—

(*a*) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(*b*) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(*c*) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Order for payment of coin or currency notes to party entitled under decree.

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Determination of attachment.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the

application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Release of attached property on furnishing security.

57A. A judgment-debtor may secure the release of his attached property by giving security to the value thereof to the Court.

Investigation of Claims and Objections.

Investigation of claims to, and objections to attachment of, attached property.

58. (*1*) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postponement of sale.

(*2*) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to be adduced by claimant.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of property from attachment.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Disallowance of claim to property attached.

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer.

62. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Saving of suits to establish right to attached property.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Garnishee Orders.

Payment of debt into Court.

63A. Where a debt has been attached under rule 46, the debtor prohibited under clause (i) of sub-rule (*1*) of rule 46 (hereinafter called "the garnishee") may pay the amount of the debt due from him to the judgment-debtor into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Notice calling on garnishee to show cause against payment into Court.

63B. Where a debt has been attached under rule 46, and the garnishee does not pay the amount of the debt into Court in accordance with the foregoing rule, the Court, on the application of the decree-holder, may order a notice to issue calling upon the garnishee to appear before the Court and show cause why he should not pay into Court the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the decree together with the costs of execution. A copy of such notice shall, unless otherwise ordered by the Court, be served on the judgment-debtor.

Procedure when the garnishee fails to make payment into Court or disputes liability.

63C. (*1*) If the garnishee does not pay into Court the amount of the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the costs of execution, and if he does not appear in answer to the notice issued under rule 63B, or does not dispute his liability to pay such debt to the judgment-debtor, then the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue against the garnishee as though such order were a decree against him.

(*2*) If the garnishee appears in answer to the notice issued under rule 63B and disputes his liability to pay the debt attached, the Court, instead of making an order as aforesaid, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit, and may proceed to determine such issue, and upon the determination of such issue shall pass such order upon the notice as shall be just.

Procedure when third person claims an interest in the attached debt.

63D. Whenever in any proceedings under the foregoing rules it is alleged by the garnishee that the debt attached belongs to some third person, or that any third person has a lien or charge upon or interest in it, the Court may order such third person to appear and state the nature and particulars of his claim, if any, upon such debt and prove the same if necessary.

Order of Court after hearing all interested parties.

63E. After hearing such third person and any other person who may subsequently be ordered to appear, or in the case of such third or other person not appearing as ordered, the Court may pass such order as is provided in the foregoing rules, or make such other order as the Court shall think fit, upon

such terms in all cases with respect to the lien, charge or interest, if any, of such third or other person as shall seem just and reasonable.

Payment by garnishee constitutes valid discharge.

63F. Payment made by or levied by execution upon the garnishee in accordance with any order made under these rules shall be a valid discharge to him as against the judgment-debtor, and any other person ordered to appear under these rules, for the amount paid or levied although such order or the judgment may be set aside or reversed.

Costs of garnishee proceedings.

63G. The costs of any application for the attachment of a debt or under the foregoing rules, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court. Costs awarded to the decree-holder shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order and in priority to the amount of his decree.

Sale Generally.

Power to order property attached to be sold and proceeds to be paid to person entitled.

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Sales by whom conducted and how made.

65. (*1*) Sales shall be conducted by the Bailiff or Deputy Bailiff, but the duty may be entrusted to a process-server when the property is moveable property not exceeding Rs. 50 in value, and when, in the opinion of the Court, for reasons recorded in the diary of the case, the Bailiff or Deputy Bailiff cannot personally conduct the sale.

(*2*) Subject to the terms of the proviso to rule 43 and of rule 74, some one day in each week shall be set apart and regularly observed for holding sales in execution of decrees; and some well-known place in the vicinity of the Court-house or the public bazaar shall be selected for the purpose.

(*3*) Subject as aforesaid, and unless the Court is of opinion that for any special reason a sale on the spot where the property is attached or situated will be more beneficial to the judgment-debtor, all property whether moveable or immoveable attached in execution of the decree shall be sold at the time and place selected.

The day to be set apart, and the place selected for holding the sales, and any changes therein, shall be reported for the information of the High Court.

(*4*) The following scale is laid down as to the amount which may be deducted from the proceeds of the sale of property sold in execution of the

decree, as the expenses of sale, and paid to the officer conducting the sale under the orders of the Court as his authorized commission :—

Where the proceeds of sale do not exceed Rs. 500,—5 per cent.

Where they exceed Rs. 500 and do not exceed Rs. 5,000,—5 per cent. on the first Rs. 500 and 2 per cent. on the remainder.

Where they exceed Rs. 5,000,—at the above rate on the first Rs. 5,000 and 1 per cent. on the remainder.

The calculation of the commission shall be on the whole amount realized in pursuance of one application for execution.

(*5*) Subject to the provisions of sub-rule (*13*) of rule 45B, no further sum beyond this authorized commission and the cost of conveyance of property to the place of sale shall be deducted from the sale proceeds.

NOTE.—As regards the travelling allowance of bailiffs going out to sell property on the spot, see rule 43 of the Burma Travelling Allowance Rules.

(*6*) When a sale of immoveable property is set aside under the provisions of rule 92 (*2*) below, no commission shall be paid to the Bailiff for selling the property.

(*7*)No officer of a subordinate Court shall receive any larger commission or fee in respect of any sale of property (mortgaged or otherwise) held in execution or pursuance of any decree or order of the Court directing or authorizing such sale than that allowed by sub-rule (*4*) above.

(*8*) The gross proceeds of sales shall be entered in Register II and in Bailiff's Register I and shall be paid into the Treasury.

Proclamation of sales by public auction.

66. (*1*) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(*2*) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(*a*) the property to be sold ;

(*b*) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government ;

(*c*) any incumbrance to which the property is liable ;

(*d*) the amount for the recovery of which the sale is ordered ; and

(*e*) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property :

Provided that no such notice shall be necessary in the case of moveable property not exceeding Rs. 250 in value.

(*3*) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (*2*) to be specified in the proclamation.

(*4*) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of making proclamation.

67. (*1*) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (*2*).

(*2*) Where the Court so directs, such proclamation shall also be published in the Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(*3*) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Time of sale.

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the Court-house of the Judge ordering the sale.

Adjournment or stoppage of sale.

69. (*1*) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(*2*) Where a sale is adjourned under sub-rule (*1*) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(*3*) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

Saving of certain sales

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

Defaulting purchaser answerable for loss on re-sale.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

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

72. Where a decree-holder purchases the property, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

Restriction on bidding or purchase by officers.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of Moveable Property.

Sale of agricultural produce.

74. (*1*) Where the property to be sold is agricultural produce, the sale shall be held,—

(*a*) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(*b*) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(*a*) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(*b*) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

75. (*1*) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land and to do all that is necessary for the purpose of tending and cutting or gathering it.

Negotiable instruments and shares in corporations.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Sale by public auction.

77. (*1*) Where moveable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(*2*) On payment of the purchase-money the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(*3*) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale, but any person injured may sue.

78. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of moveable property, debts and shares.

79. (*1*) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(*3*) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secertary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

80. (*1*) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(*2*) Such execution or endorsement may be in the following form, namely :—

"A. B. by C. D., Judge of the Court of (*or as the case may be*), in a suit by E. F. against A. B."

(*3*) Until the transfer of such negotiable instrument or share, the Court may by order appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same ; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct, and such property shall vest accordingly.

Sales of arms.

81A. Whenever guns or other arms in respect of which licences have to be taken by purchasers under the Arms Act are sold by public auction in execution of a decree, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of purchasers, and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the police to enforce the requirements of the Arms Act.

Sale of Immoveable Property.

What Courts may order sales.

82. Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

Postponement of sale to enable judgment-debtor to raise amount of decree.

83. (*1*) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(*2*) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and

notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(*3*) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Deposit by purchaser and re-sale on default.

84. (*1*) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent, on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Time for payment in full of purchase-money.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

Procedure in default of payment.

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Notification on re-sale.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Bid of co-sharer to have preference.

88. Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Application to set aside sale on deposit.

89. (*1*) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

(*a*) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(*b*) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(*2*) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(*3*) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not recovered by the proclamation of sale.

Application to set aside sale on ground of irregularity or fraud.

90. (*1*) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it :

Provided that—

(*a*) no application to set aside a sale shall be admitted unless it discloses a ground which could not have been put forward by the applicant before the sale was conducted ; and

(*b*) no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold.

Sale when to become absolute or be set aside.

92. (*1*) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(*2*) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made

within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(*3*) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

Return of purchase-money in certain cases.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Certificate to purchaser.

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Copy of sale certificate to be issued to Sub-Registrar.

94A. A copy of every sale certificate issued under rule 94 shall be sent forthwith to the Sub-Registrar within whose sub-district the land sold or any part thereof is situate.

Certification of name and address of purchaser to Superintendent of Land Records.

94B. If in execution of a decree any interest in land is sold, the names and addresses of the purchaser or purchasers and the interest thereby acquired shall be certified to the Superintendent of Land Records as soon as the sale has been confirmed under rule 92 (*1*).

Delivery of property in occupancy of judgment-debtor.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant, by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to Delivery of Possession to Decree-holder or Purchaser.

Resistance or obstruction to possession of immoveable property.

97. (*1*) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(*2*) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Resistance or obstruction by judgment-debtor.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant or of its own motion, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison at the cost of Government for a term which may extend to thirty days.

Resistance or obstruction by *bonâ fide* claimant.

99. Where the Court is not so satisfied it shall make an order dismissing the application.

Dispossession by decree-holder or purchaser.

100. (*1*) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(*2*) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Bonâ fide claimant to be restored to possession.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

Rules not applicable to transferee *lite pendente.*

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Orders conclusive subject to regular suit.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

ORDER XXII.

Death, Marriage and Insolvency of Parties.

No abatement by party's death, if right to sue survives.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Procedure where one of several plaintiffs or defendants dies and right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or of sole plaintiff.

3. (*1*) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (*1*), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Procedure in case of death of one of several defendants or of sole defendant.

4. (*1*) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceasd defendant.

(3) Where within the time limited by law no application is made under sub-rule (*1*), the suit shall abate as against the deceased defendant.

Determination of question as to legal representative.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

No abatement by reason of death after hearing.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced

notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Suit not abated by marriage of female party.

7. (*1*) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(*2*) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

When plaintiff's insolvency bars suit.

8. (*1*) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

Procedure where assignee fails to continue suit or give security.

(*2*) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

9. (*1*) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(*2*) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(*3*) The provisions of [sections 4 and 5 of the Limitation Act][1] shall apply to applications under sub-rule (*2*).

Procedure in case of assignment before final order in suit.

10. (*1*) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(*2*) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (*1*).

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[1] Substituted by Burma Act II, 1945.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal. Application of Order to appeals.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order. Application of Order to proceedings.

ORDER XXIII.

Withdrawal and Adjustment of Suits.

1. (*1*) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim. Withdrawal of suit or abandonment of part of claim.

(*2*) Where the Court is satisfied—

(*a*) that a suit must fail by reason of some formal defect, or

(*b*) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(*3*) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (*2*), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(*4*) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. Limitation law not affected by first suit.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall either pass a decree in accordance therewith or shall decree that all further proceedings in the suit shall be stayed upon the terms of the said agreement, compromise or satisfaction with liberty to the parties to apply for the purpose of carrying the same into effect: Compromise of suit.

Provided that, before recording an agreement, compromise or satisfaction in a suit instituted under the provisions of section 92 of the Code of Civil Procedure, the Court shall direct notice returnable within a reasonable time to be given to the Attorney-General, or the officer with whose consent the suit was instituted, of the agreement, compromise or satisfaction proposed to be recorded. The Attorney-General or such officer as aforesaid may thereupon appear before the Court and be heard in the matter of such agreement, compromise or satisfaction.

Proceedings in execution of decrees not affected.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV.

Payment into Court.

Deposit by defendant of amount in satisfaction of claim.

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit.

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Procedure where plaintiff accepts deposit as satisfaction in part.

4. (*1*) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

(*2*) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(*a*) *A* owes *B* Rs. 100. *B* sues *A* for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, *A* pays the money into Court. *B* accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) *B* sues *A* under the circumstances mentioned in illustration (*a*). On the plaint being filed, *A* disputes the claim. Afterwards *A* pays the money into Court. *B* accepts it in full satisfaction of his claim. The Court should also give *B* his costs of suit, *A*'s conduct having shown that the litigation was necessary.

(*c*) *A* owes *B* Rs. 100, and is willing to pay him that sum without suit. *B* claims Rs. 150 and sues *A* for that amount. On the plaint being filed *A* pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. *B* accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay *A*'s costs.

ORDER XXV.

Costs and Security for Costs in Special Cases.

Residence out of the Union of Burma.

1. (*1*) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of the Union of Burma, and such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within the Union of Burma other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

(*2*) Whoever leaves the Union of Burma under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of the Union of Burma within the meaning of sub-rule (*1*).

(*3*) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within the Union of Burma.

Champerty and maintenance.

2. Where it is proved to the satisfaction of the Court that the plaintiff is deriving assistance from or is being maintained by a person in consideration of a promise to give to such person a share in the subject-matter or proceeds of the suit, or in consideration of having transferred his interest in the subject-matter of the suit, the Court may, either of its own motion or on the application of any defendant,—

(*a*) award costs on a special scale to be decided by the Court and approximating to the actual costs reasonably incurred by the defendant;

(*b*) at any stage of the suit, order the plaintiff, within a time fixed by it, to give security for the payment of the estimated amount of such costs or such proportion thereof as the Court may think just.

Effect of failure to furnish security.

3. (*1*) In the event of security demanded under rule 1 or rule 2 not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff is permitted to withdraw therefrom.

(*2*) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the order of

dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(*3*) The order of dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI.

Commissions.

Commissions to examine Witnesses.

Cases in which Court may issue commission to examine witness.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

Order for commission.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Where witness resides within Court's jurisdiction.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Persons for whose examination commission may issue.

4. (*1*) Any Court may in any suit issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction;

(*b*) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(*c*) any person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(*2*) Such commission may be issued to any Court, not being the High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(*3*) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission or request to examine witness not within the Union of Burma.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within the Union of Burma is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto. Court to examine witness pursuant to commission.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit. Return of commission with depositions of witnesses.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered unless— When depositions may be read in evidence.

(*a*) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(*b*) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (*a*), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for local Investigations.

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court: Commissions to make local investigations.

Provided that, where the President of the Union has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. (*1*) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court. Procedure of Commissioner.

(*2*) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Report and depositions to be evidence in suit.

Commissioner may be examined in person.

Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commissions to examine Accounts.

Commission to examine or adjust accounts.

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Court to give Commissioner necessary instructions.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Proceedings and report to be evidence. Court may direct further enquiry.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Commissions to make Partitions.

Commission to make partition of immoveable property.

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Procedure of Commissioner.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court ; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(*3*) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied ; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General Provisions.

Expenses of commission to be paid into Court.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(*b*) call for and examine documents and other things relevant to the subject of inquiry ;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance and examination of witnesses before Commissioner.

17. (*1*) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of the Union of Burma, and for the purposes of this rule the Commissioner shall be deemed to be a civil Court.

(*2*) A Commissioner may apply to any Court (not being the High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Parties to appear before Commissioner.

18. (*1*) When a commission is issued under this Order, the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders, unless otherwise directed by the Court, within fifteen days.

(*2*) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

Fees to Commissioners for local Investigation, and Commissioners of Partition or to take Accounts, or for examination of Witnesses.

Expenses of commissions.

19. Civil Courts in issuing commissions will be guided by the provisions of rule 15, and, subject to the provisions of rule 23, will exercise their own judgment in fixing a reasonable sum for the expenses of the commission.

20. * * * *

Execution of commission an official act.

21. It is to be understood that no part of the fee sent for the execution of a commission is to be accepted, either personally or on behalf of Government. The execution of a commission is an official act which judicial officers are bound to perform when called upon and is not work undertaken for a private body.

Refund of unexpended balance of expenses.

22. In all cases the unexpended balance, which remains after all charges have been deducted, should be returned to the Court issuing the commission.

Fees to Commissioner of partition or to take accounts or to examine witnesses.

23. The following fees are to be allowed to Commissioners of partition or to take accounts, or for the examination of witnesses, namely :—

Commissioners' fees for every effective meeting shall not exceed three gold mohurs for the first two hours and one gold mohur for each succeeding hour.

Fees to Commissioners for administering an Oath or solemn Affirmation to a Declarant of an Affidavit.

Fees to Commissioners for affidavits.

24. When, under the orders of a Court in the town of Rangoon or of a District Court, an oath or solemn affirmation is administered to a declarant of an affidavit at his request elsewhere than at the Court, a fee of Rs. 16 shall be paid by the said declarant:

Provided that—

(*a*) the administration of the oath or of solemn affirmation elsewhere than in Court shall be authorized by the Court by order in writing;

(*b*) if more than one affidavit is taken at the same time and place, the fee shall be Rs.8 for each affidavit after the first;

(*c*) in no case shall the fees for taking any number of affidavits at the same time and place exceed Rs. 80;

(*d*) in pauper suits and appeals, when the affidavit of a pauper is taken, no fee shall be charged.

25. Affidavits taken under rule 24 shall be taken out of Court hours. The fees shall be retained by the Commissioner for administering the oath or solemn affirmation.

No fee for administration of oath under the order of a Court.

26. No fee shall be charged for the administration of an oath under the order of any Court other than those specified in rule 24.

Commissions issued at the instance of Foreign Tribunals.

Cases in which High Court may issue commission to examine witness.

27. (*1*) If the High Court is satisfied—

(*a*) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(*b*) that the proceeding is of a civil nature, and

(*c*) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(*2*) Evidence may be given of the matters specified in clauses (*a*), (*b*) and (*c*) of sub-rule (*1*)—

(*a*) by a certificate signed by the consular officer of the foreign country of the highest rank in the Union of Burma and transmitted to the High Court through the President of the Union, or

(*b*) by a letter of request issued by the foreign Court and transmitted to the High Court through the President of the Union, or

(*c*) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

Application for issue of commission.

28. The High Court may issue a commission under rule 27—

(*a*) upon application by a party to the proceeding before the foreign Court, or

(*b*) upon application by a law officer of the Government acting under instructions from the President of the Union.

To whom commission may be issued.

29. A commission under rule 27 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the Court thinks fit to execute the commission.

Issue, execution and return of commissions and transmission of evidence to foreign Court.

30. The provisions of rules 6, 15, 16, 17 and 18 of this Order, in so far as they are applicable, shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the President of the Union along with the letter of request for transmission to the foreign Court.

ORDER XXVII.

Suits by or against the Government or Public Officers in their official capacity.

Suits by or against the Government.

1. In any suit by or against the Government, the plaint or written statement shall be signed by such person as the President of the Union may, by

general or special order, appoint in this behalf, and shall be verified by any person whom the President of the Union may so appoint and who is acquainted with the facts of the case.

Persons authorized to act for the Government.

2. Persons being *ex-officio* or otherwise authorized to act for the 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 the Government.

Plaints in suits by or against the Government.

3. In suits by or against the Government, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79. [* * * *][1]

Agent for the Government to receive process.

4. The [Government pleader][2] in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

Fixing of day for appearance on behalf of the Government.

5. The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the [Government pleader][2] to appear and answer on behalf of the Government, and may extend the time at its discretion.

Attendance of person able to answer questions relating to suit against Government.

6. The Court may also, in any case in which the [Government pleader][2] is not accompanied by any person on the part of the Government who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Extension of time to enable public officer to make reference to Government.

7. (*1*) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(*2*) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

Procedure in suits against public officer.

8. (*1*) Where the Government undertakes the defence of a suit against a public officer, the [Government pleader,][2] upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(*2*) Where no application under sub-rule (*1*) is made by the [Government pleader][2] on or before the day fixed in the notice for the defendant to

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Substituted *ibid*.

appear and answer, the case shall proceed as in a suit between private parties :

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree,

8A. No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity. No security to be required from Government or a public officer in certain cases.

[1]**8B.** * * * *

ORDER XXVIII.

Suits by or against Members of the Burma Military, Naval or Air Forces.

1. (*1*) Whenever any member of [the Burma][2] military, naval or air-forces actually serving the Government in such capacity is a party to a suit and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead. Members of the Burma military, naval or air-forces who cannot obtain leave may authorize any person to sue or defend for them.

(*2*) The authority shall be in writing and shall be signed by the member of [the Burma][2] military, naval or air-forces in the presence of (*a*) his commanding officer, or the next subordinate officer if the party is himself the commanding officer, or (*b*) where the member of [the Burma][2] military, naval or air-forces is serving in military or naval or air-force staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(*3*) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the member of [the Burma][2] military, naval or air-forces by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, ship, detachment or depôt to which the member of [the Burma][2] military, naval or air-forces belongs.

2. Any person authorized by a member of [the Burma][2] military, naval or air-forces to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as such member of [the Burma][2] forces could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such member of [the Burma][2] forces. Person so authorized may act personally or appoint pleader.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Substituted *ibid.*

Service on person so authorized, or on his pleader, to be good service.

3. Processes served upon any person authorized by a member of [the Burma][1] military, naval or air-forces under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX.

Suits by or against Corporations.

Subscription and verification of pleading.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(*a*) on the secretary, or on any director, or other principal officer of the corporation, or

(*b*) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Power to require personal attendance of officer of corporation.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER XXX.

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

Suing of partners in name of firm.

1. (*1*) Any two or more persons claiming or being liable as partners and carrying on business in the Union of Burma may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(*2*) Where persons sue or are sued as partners in the name of their firm under sub-rule (*1*), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Disclosure of partners' names.

2. (*1*) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(*2*) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (*1*), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(*3*) Where the names of the partners are declared in the manner referred to in sub-rule (*1*), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Service.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

(*a*) upon any one or more of the partners, or

(*b*) at the principal place at which the partnership business is carried on within the Union of Burma upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct, and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without the Union of Burma:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within the Union of Burma whom it is sought to make liable.

Right of suit on death of partner.

4. (*1*) Notwithstanding anything contained in section 45 of the Contract Act, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(*2*) Nothing in sub-rule (*1*) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(*a*) to apply to be made a party to the suit, or

(*b*) to enforce any claim against the survivor or survivors.

Notice in what capacity served.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed, by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership

business, or in both characters and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance under protest.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between co-partners.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Suit against person carrying on business in name other than his own.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI.

Suits by or against Trustees, Executors and Administrators.

Representation of beneficiaries in suits concerning property vested in trustees, etc.

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Joinder of trustees, executors and administrators.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside the Union of Burma, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her. Husband of married executrix not to join.

ORDER XXXII.

Suits by or against Minors and Persons of Unsound Mind.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Minor to sue by next friend.

2. (*1*) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Where suit is instituted without next friend, plaint to be taken off the file.

(*2*) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. (*1*) Where any of the defendants is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper guardian for the suit for such minor. Guardian for the suit to be appointed by Court for minor defendant.

(*2*) For this purpose there shall be filed by the plaintiff with the plaint a list of all persons whom the plaintiff considers to be capable of acting as guardian of the minor for the suit. Such list shall be in the form of an application duly verified and requesting that one of such persons may be appointed guardian of the minor for the suit, and shall state for each of such persons whether he is a guardian appointed or declared by competent authority, or a natural guardian, or the custodian of the minor, or a stranger, and shall give the address of each of such persons.

(*3*) An order for the appointment of a guardian for the suit may also be obtained upon application in the name and on behalf of the minor.

(*4*) An application under sub-rule (*2*) or sub-rule (*3*) shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(*5*) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person so served with notice under this sub-rule.

Who may act as next friend or be appointed guardian for the suit.

4. (*1*) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.

(*2*) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as next friend of the minor, or be appointed his guardian for the suit, unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(*3*) In the event of there being no such guardian, the natural guardian of the minor, or, if there is no natural guardian, the person in whose care the minor is, should, subject to the proviso to sub-rule (*1*), ordinarily be appointed his guardian for the suit.

(*4*) No person shall without his consent be appointed guardian for the suit.

(*5*) Where none of the aforementioned persons, or of the persons mentioned by the plaintiff in the list filed by him under sub-rule (*2*) of rule 3, is fit and willing to act as guardian for the suit, and where no application is made on behalf of the minor under sub-rule (*3*) of rule 3, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties to the suit or out of any fund in Court in which the minor is interested, and may give directions for repayment or allowance of such costs as justice and the circumstances of the case may require. An advocate or pleader of the Court shall be an officer of the Court for this purpose.

Representation of minor by next friend or guardian for the suit.

5. (*1*) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (*2*), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Receipt by next friend or guardian for the suit of property under decree for minor.

6. (*1*) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability

known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Agreement or compromise by next friend or guardian for the suit.

7. (*1*) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(*2*) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

Retirement of next friend.

8. (*1*) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(*2*) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

Removal of next friend.

9. (*1*) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within the Union of Burma, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of proceedings on removal, etc., of next friend.

10. (*1*) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Retirement, removal or death of guardian for the suit.

11. (*1*) Where the guardian for the suit desires to retire, or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(*2*) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Course to be followed by minor plaintiff or applicant on attaining majority.

12. (*1*) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(*2*) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(*3*) The title of the suit or application shall in such case be corrected so as to read henceforth thus :—

"*A.B.*, late a minor, by *C.D.*, his next friend, but now having attained majority."

(*4*) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(*5*) Any application under this rule may be made *ex-parte*, but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Where minor co-plaintiff attaining majority desires to repudiate suit.

13. (*1*) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff ; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(*2*) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(*3*) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(*4*) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Unreasonable or improper suit.

14. (*1*) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(*2*) Notice of the application shall be served on all the parties concerned ; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. Application of rule to persons of unsound mind.

16. Nothing in this Order shall apply to a * * * Ruling Chief suing or being sued in the name of his State, or being sued by direction of the President of the Union in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind. Saving for Chiefs.

ORDER XXXIII.

Pauper Suits.

1. Subject to the provisions of this Order, any suit may be instituted without payment of the court-fee prescribed by law for the plaint if the plaintiff is a pauper, that is to say, if his property is not of the value of Rs. 100 or of the amount of the court-fee (if more than Rs. 100), excluding from the computation the subject-matter of the suit and property exempted from attachment under section 60. Pauper exempted from court-fee.

Explanations.—(i) In a mortgage suit the subject-matter shall be estimated at the amount due on the mortgage ;

(ii) any part of the subject-matter of the suit which the opposite party relinquishes and places at the immediate disposal of the plaintiff shall be included in the computation of the plaintiff's property ; and

(iii) where the plaintiff sues in a representative capacity, such as trustee, executor or administrator, or liquidator, the question of pauperism shall be determined with relation to the property of the estate which is so represented.

2. (*1*) A plaintiff may obtain leave to sue as a pauper by presenting his plaint with a petition signed and verified in the manner prescribed for the signing and verification of plaints stating (*i*) that the plaintiff is a pauper and that all the property of the plaintiff consists of the items set out and valued in the schedule to the petition, (*ii*) that the plaintiff has not within two months next before the presentation of the petition disposed of any property fraudulently or in order to enable him to plead pauperism, and (*iii*) that the plaintiff has not entered into any agreement with any person whereby such person has or will have an interest in the proceeds of the suit. Application for leave to sue as a pauper.

(*2*) The plaint and petition shall be presented by the plaintiff in person unless he is exempted from appearing in Court, in which event the petition may be presented by an authorized agent who can answer all questions relating to the application.

Preliminary investigation.

3. Subject to the jurisdiction of the Court to allow amendments to be made, the Court shall reject the petition in any of the following cases:—

(*a*) where the plaint is not in the form prescribed;

(*b*) where the plaint does not disclose a cause of action within the jurisdiction of the Court;

(*c*) where the claim appears to be barred by any law;

(*d*) where the applicant has within two months next before the presentation of the petition disposed of any property fraudulently or in order to be entitled to plead pauperism;

(*e*) where the applicant has entered into any agreement with any person whereby such person has or will have an interest in the proceeds of the suit.

Hearing of petition.

4. (*1*) If the petition is not rejected under rule 3 the Court shall fix a day (of which at least ten days' notice shall be given to the opposite party and the Government pleader) for the examination and cross-examination of the plaintiff (or his agent, where the plaintiff is allowed to appear by an agent) and the witnesses (if any) produced by either party in proof or disproof of the statements made in the petition.

(2) Where the plaintiff appears by an agent the Court may, if it thinks fit, order that the plaintiff be examined on commission.

(*3*) The Court shall make a memorandum of the substance of the evidence taken at the hearing, and shall make an order allowing or rejecting the petition.

(*4*) Subject to any amendment which the Court may allow, the petition shall be rejected under this rule if the Court is not satisfied of the truth of any of the statements made in the petition : provided that the Court may admit the plaint on payment of the court-fee due thereon.

(5) If the petition is rejected the plaintiff shall be precluded from filing any further petition to sue as a pauper in respect of the same cause of action: provided that if the petition is rejected for default of appearance or due prosecution it may be revived on good cause being shown.

Pauperism pending suit.

5. If, in any suit, an order is made for the payment of an additional court-fee in respect of the plaint, the plaintiff may apply, by petition, for leave to continue the suit as a pauper; and the provisions of this Order shall apply to such petition.

Dispaupering.

6. In a pauper suit the Court may, at any time, on the application of any party or of the Government pleader (on seven days' notice to the plaintiff) order that the suit be stayed until the court-fee prescribed for the plaint is paid, on proof that the circumstances existing at the time when leave was given to the plaintiff to sue as a pauper were such that the leave ought not to have been given, or that the plaintiff has ceased to be a pauper, or has made an arrangement with any person whereby the latter has or will have an interest in the proceedings of the suit, or where a new plaintiff who is not a pauper is substituted or added as a party.

Recovery of court-fees after decree.

7. (*1*) At the conclusion of a pauper suit the Court shall order the court-fee prescribed for the plaint to be paid to the Collector by any party to the suit or by the parties in any proportion as may seem to the Court to be just, and shall cause a copy of the order to be forwarded to the Collector.

(*2*) The Collector may at any time after the conclusion of the suit apply to the Court to make or amend an order under sub-rule (*1*).

(*3*) Without prejudice to the right of the Collector to take proceedings for execution of an order under sub-rule (*1*), the Court which executes the decree in the suit shall cause the court-fee or the proportion thereof ordered to be paid by any party to the suit under sub-rule (*1*) to be paid to the Collector out of any money or other property held or recovered by the Court on behalf of such party or his representative.

ORDER XXXIV.

Suits relating to Mortgages of Immoveable Property.

Parties to suits.

1. Subject to the provisions of this Code, in every suit on a mortgage for foreclosure, sale or redemption—

(*a*) all persons having an interest in the mortgage-security or in the right of redemption shall be joined as parties : provided that a prior mortgagee need not be joined as a party to a suit relating to a subsequent mortgage except on application made by him in that behalf ;

(*b*) the plaint shall include a statement of all persons who, to the knowledge of the plaintiff, are interested in the mortgage-security or in the right of redemption ; and

(*c*) the Court may direct that any party claiming any present remedy in respect of the mortgaged property shall prove his claim, and have such remedy as may be included in the decree in the suit.

Suit for foreclosure.

2. In a suit by a mortgagee for foreclosure of a mortgage by conditional sale or an anomalous mortgage whose terms provide for this remedy, if the plaintiff succeeds the Court shall ascertain the amount due by the mortgagor to the plaintiff (*a*) for the redemption of the mortgaged property, (*b*) for the costs of the suit (if any) payable by the mortgagor to the plaintiff, and (*c*) for such costs, charges and expenses, if any, and interest thereon as may be legally recoverable by the plaintiff from the mortgagor in respect of the mortgage, deducting therefrom the costs, charges and expenses, if any, legally recoverable by the mortgagor from the plaintiff in respect of the mortgage and the costs of the suit (if any) payable by the plaintiff to the mortgagor ;

and the Court shall pass a preliminary decree declaring the amount so found due and further declaring that the plaintiff shall, subject to the provisos hereunder stated, be entitled to apply for and obtain a final decree declaring that the mortgagor and all other parties to the suit who have a right to redeem

the plaintiff's mortgage, and all persons claiming through or under them or any of them, shall be debarred from all such right of redemption, and that the mortgagor shall be freed from all liabilities in respect of the mortgage or on account of the suit, and giving such directions as may be necessary to put the plaintiff in possession of the property ;

and, if the Court is of opinion that additional costs over and above costs on the uncontested scale or any other additional costs have been incurred through the conduct of any defendant or defendants other than the mortgagor, the Court may in the preliminary decree make such order as to the personal payment of such additional costs by such other defendant or defendants as it shall deem fit :

Provided that—

(*a*) the mortgagor or any other party to the suit who has a right to redeem the plaintiff's mortgage may apply for and obtain a final decree for redemption on payment into Court of the amount so declared to be due on or before a date to be fixed by the preliminary decree (not being more than six months after the date of such decree) or such later date as the Court may substitute therefor on good cause shown and upon terms to be fixed by the Court, and on compliance with all orders of the Court and on payment of such further sums as the Court may determine to be payable under rule 7 ; and

(*b*) in the case of an anomalous mortgage, the Court may, at the instance of any party to the suit, pass a decree for sale as under rule 3 in lieu of a decree for foreclosure.

Suit for sale.

3. (*1*) In a suit by a mortgagee for sale of the mortgaged property, if the plaintiff succeeds the Court shall ascertain the amount due by the mortgagor to the plaintiff (*a*) for principal and interest on the mortgage, (*b*) for the costs of the suit (if any) payable by the mortgagor to the plaintiff, and (*c*) for such costs, charges, and expenses, if any, and interest thereon, as may be legally recoverable by the plaintiff from the mortgagor in respect of the mortgage, deducting from such sums the costs, charges, and expenses, if any, legally recoverable by the mortgagor from the plaintiff in respect of the mortgage and the costs of the suit (if any) payable by the plaintiff to the mortgagor ;

and the Court shall pass a preliminary decree declaring the amount so found due, and further declaring that the plaintiff shall, subject to the proviso hereunder stated, be entitled to apply for and obtain a final decree for sale of the mortgaged property or a sufficient part thereof ;

and, if the Court is of opinion that additional costs over and above costs on the uncontested scale or any other additional costs have been incurred through the conduct of any defendant or defendants other than the mortgagor, the Court may in the preliminary decree make such order as to the personal

payment of such additional costs by such other defendant or defendants as it shall deem fit:

Provided that the mortgagor or any other party to the suit who has a right to redeem the plaintiff's mortgage may apply for and obtain a final decree for redemption on payment into Court of the amount so found due on or before a date to be fixed by the preliminary decree (not being more than six months after the date of such decree) or such later date as the Court may substitute therefor on good cause shown and upon terms to be fixed by the Court, and on compliance with all orders of the Court and on payment of such further sums as the Court may determine to be payable under rule 7.

(*2*) In pursuance of a final decree for sale the property shall be sold as the Court may direct, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) shall, subject to any orders made by the Court as to setting off the amount due against the purchase money, be paid into Court and applied in payment of the amount found due as aforesaid together with such further sums as the Court may determine to be payable under rule 7:

Provided that, at any time before the confirmation of the sale, the mortgagor or any other party to the suit who has a right to redeem the plaintiff's mortgage may apply for and obtain a final order for redemption, on payment into Court of the amount found due as aforesaid together with such further sums as the Court may determine to be payable under rule 7, and a compensatory amount equal to five per cent. of the purchase-money (if any) paid into Court by the purchaser, which said compensatory amount shall be paid to the purchaser together with the said purchase-money on his application.

(*3*) Where there is included in the preliminary decree a declaration of the priorities of the parties to payment out of the proceeds of sale the Court shall (subject to the provisions of section 81 of the Transfer of Property Act) pass a final order for payment in accordance with such prorities: provided that a mortgagee having priority over the plaintiff may (subject to the provisions of section 57 of the Transfer of Property Act) elect that the property shall be sold subject to his mortgage.

(*4*) Where the proceeds of the sale are not sufficient for the payment of the money due to the plaintiff or any other party to the suit, and the balance due to the plaintiff or such other party is legally recoverable by him from the mortgagor, the Court shall, on application made in this behalf by the plaintiff or such other party, pass a decree against the mortgagor personally for the payment of such balance.

Explanation.—In this sub-rule, the term "mortgagor" shall include a surety, whether under or subsequent to the mortgage.

(*5*) The provisions of this rule shall, so far as may be, apply to every suit to enforce a charge in respect of which the Court may pass a decree for sale of the property charged.

(*6*) In territories to which the Transfer of Property Act has been extended, a mortgagee who has obtained a decree for payment of money in satisfaction of a claim arising under his mortgage shall not be entitled to bring the mortgaged property to sale otherwise than by a suit for sale under this rule, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

Suit for redemption.

4. (*1*) In a suit for redemption of a mortgage, if the plaintiff succeeds, the Court shall ascertain the amount due by the plaintiff to the defendant (*a*) for principal and interest (if any) due on the mortgage, (*b*) for the costs of the suit (if any) payable by the plaintiff to the defendant, and (*c*) for such costs, charges and expenses, if any, and interest thereon, as may be legally recoverable by the defendant from the plaintiff in respect of the mortgage, deducting therefrom the costs, charges, and expenses, if any, legally recoverable by the plaintiff from the defendant in respect of the mortgage and the costs of the suit (if any) payable by the defendant to the plaintiff.

(*2*) If it appears that nothing is due to the defendant on the mortgage or that he has been overpaid, the Court shall pass a final decree for redemption directing further that the defendant shall pay to the plaintiff the amount (if any) overpaid with such interest thereon as the Court may deem reasonable.

(*3*) If the account is in favour of the defendant the Court shall pass a preliminary decree declaring the amount found due by the plaintiff to the defendant; and further declaring that, on payment into Court of the said amount on or before a date to be fixed by the said decree (not being more than six months after the date of such decree) or such later date as the Court may substitute therefor on good cause shown and upon terms to be fixed by the Court, and on compliance with all orders of the Court and on payment of such further sums as the Court may determine to be payable under rule 7, the plaintiff shall be entitled to apply for and obtain a final decree directing the defendant to deliver to the plaintiff, or to such person as the plaintiff appoints in this behalf, the mortgaged property in the possession of the defendant and all documents in the possession or power of the defendant relating to the said property; and to execute and have registered (as required by the plaintiff and at the cost of the plaintiff) either (*a*) an acknowledgment in writing that all rights created by the mortgage have been extinguished, or (*b*) a retransfer to the plaintiff or to such third person as he may direct of the property freed from the mortgage and from all encumbrances created by the defendant or by any person deriving title from him or, where the defendant claims by derived title, by those under whom he claims, or (*c*) a transfer of the mortgage to such third person as the plaintiff may direct;

and further declaring that, if the plaintiff fails to make full payment as aforesaid, the defendant shall be entitled to apply for and obtain a final decree for sale of the property subject to the provisions of rule 3, or a final

decree for foreclosure subject to the provisions of rule 2 where such remedy is legally available.

(*4*) If the Court is of opinion that additional costs over and above costs on the uncontested scale or any other additional costs have been incurred through the conduct of any defendant or defendants other than the mortgagee whose mortgage is sought to be redeemed, the Court may in the only or preliminary decree, as the case may be, make such order as to the personal payment of such additional costs by such other defendant or defendants as it shall deem fit.

Subrogation.

5. Where in any suit on a mortgage a party other than the mortgagor claims to be subrogated to the rights of the mortgagee the Court may, on the application of such party, make an order declaring that the mortgage subsists for his benefit.

Interest.

6. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely :—

(*a*) interest up to the date on or before which payment of the amount declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(*i*) on the principal amount declared due on the mortgage at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable;

(*ii*) on the amount of the costs of the suit awarded to the mortgagee,— at such rate as the Court deems reasonable from the date of the preliminary decree; and

(*iii*) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred in respect of the mortgage-security up to the date of the preliminary decree,—at the rate agreed between the parties or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum; and

(*b*) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(*i*) on the aggregate of the principal sums specified in clause (*a*) and of the interest thereon, as calculated in accordance with that clause; and

(*ii*) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 7.

Adjustment of account.

7. In finally adjusting the amount to be paid to a mortgagee the Court shall determine the sum (if any) payable in respect of costs, charges, and

expenses properly incurred by the mortgagee in respect of the mortgaged property and interest from the date of the last adjustment.

ORDER XXXV.

Interpleader.

Plaint in interpleader suits.

1. In every suit of interpleader the plaint shall, in addition to other statements necessary for plaints, state—

(*a*) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(*b*) the claims made by the defendants severally; and

(*c*) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into Court.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required so to pay or place it before he can be entitled to any order in the suit.

Procedure where defendant is suing plaintiff.

3. Where any of the defendants in an interpleader suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit.

Procedure at first hearing.

4. (*1*) 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

(*b*) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(*2*) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(*3*) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(*a*) that an issue or issues between the parties be framed and tried, and

(*b*) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and tenants may not institute interpleader suits.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(*a*) *A* deposits a box of jewels with *B* as his agent. *C* alleges that the jewels were wrongfully obtained from him by *A*, and claims them from *B*. *B* cannot institute an interpleader suit against *A* and *C*

(*b*) *A* deposits a box of jewels with *B* as his agent. He then writes to *C* for the purpose of making the jewels a security for a debt due from himself to *C*. *A* afterwards alleges that *C*'s debt is satisfied, and *C* alleges the contrary. Both claim the jewels from *B*. *B* may institute an interpleader suit against *A* and *C*.

Charge for plaintiff's costs.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI.

Special Case.

Power to state case for Court's opinion.

1. (*1*) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(*a*) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(*b*) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(*2*) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Where value of subject-matter must be stated.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, of any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement to be filed and registered as suit.

3. (*1*) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(*2*) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Hearing and disposal of case.

5. (*1*) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(*2*) Where the Court is satisfied after examination of the parties, or after taking such evidence as it thinks fit,—

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

(*b*) that they have a *bonâ fide* interest in the question stated therein, and

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

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII.

Summary Procedure on Negotiable Instruments.

Application of Order.

1. This Order shall apply only to the High Court.

Institution of summary suits upon bills of exchange, etc.

2. (*1*) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in which the plaintiff shall state his desire so to proceed; and the summons shall be in form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(*2*) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, or of his applying for such leave within ten days from the service of the summons on him and on proof that the summons was duly served on him more than ten days before, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree—

(*a*) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

(*b*) for such subsequent interest, if any, as the Court may order under section 34 of this Code; and

(*c*) for such sum for costs as may be prescribed:

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

(*3*) A decree passed under this rule may be executed forthwith.

Defendant showing defence on merits to have leave to appear.

3. (*1*) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(*2*) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

Power to set aside decree.

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, etc., to be deposited with officer of Court.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishoured bill or note.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Procedure in suits.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII.

ARREST AND ATTACHMENT BEFORE JUDGMENT.

Arrest before Judgment.

Where defendant may be called upon to furnish security for appearance.

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (*a*) to (*d*), the Court is satisfied, by affidavit or otherwise,—

(*a*) that the defendant, with intent to 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,—

(*i*) has absconded or left the local limits of the jurisdiction of the Court, or

(*ii*) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(*iii*) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(*b*) that the defendant is about to leave the Union of Burma under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

Security.

2. (*1*) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure on application by surety to be discharged.

3. (*1*) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(*3*) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to furnish security or find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than

six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before Judgment.

Where defendant may be called upon to furnish security for production of property.

5. (*1*) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(*a*) is about to dispose of the whole or any part of his property, or

(*b*) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(*3*) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

Attachment where cause not shown or security not furnished.

6. (*1*) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Mode of making attachment.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Investigation of claim to property attached before judgment.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Removal of attachment when

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the

security furnished or suit dismissed.

security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree

Property attached before judgment not to be re-attached in execution of decree.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a reattachment of the property.

Agricultural produce not attachable before judgment.

12. Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

Small Cause Court not to attach immoveable property.

13. Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immoveable property.

ORDER XXXIX.

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

Temporary Injunctions.

Cases in which temporary injunction may be granted.

1. Where in any suit it is proved by affidavit or otherwise—

(*a*) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or

(*b*) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

Injunction to restrain repetition or continuance of breach.

2. (*1*) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for

a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(*2*) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit.

(*3*) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(*4*) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

Before granting injunction, Court to direct notice to opposite party.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Order for injunction may be discharged, varied or set aside.

4. Any order for an injunction may be discharged or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Injunction to corporation binding on its officers.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory Orders.

Power to order interim sale.

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Detention, preservation, inspection, etc., of subject-matter of suit.

7. (*1*) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(*a*) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein ;

(*b*) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(*c*) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(*2*) The provisions as to execution of process shall apply *mutatis mutandis* to persons authorized to enter under this rule.

Application for such orders to be after notice.

8. (*1*) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(*2*) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

When party may be put in immediate possession of land, the subject-matter of suit.

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure; and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposit of money, etc., in Court.

10. Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL.

Appointment of Receivers.

Appointment of receivers.

1. (*1*) Where it appears to the Court to be just and convenient, the Court may by order—

(*a*) appoint a receiver of any property, whether before or after decree;

(*b*) remove any person from the possession or custody of the property;

(*c*) commit the same to the possession, custody, or management of the receiver; and

(*d*) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents, as the owner himself has, or such of those powers as the Court thinks fit.

(*2*) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Remuneration.

2. The fees to be paid as remuneration for the services of the receiver shall be in accordance with the following scale :—

(*a*) On rents or outstandings recovered or on the proceeds of the sale of moveable or immoveable property, unless for special reasons, to be recorded, the Court orders the remuneration to be at some other rate—5 per cent.

(*b*) For taking charge of money or of moveable or immoveable property which is not sold, unless for special reasons it is otherwise ordered by the Court, on the estimated value—1 per cent.

(*c*) For any special work not provided for above, such remuneration as the Court on the application of the receiver shall order to be paid.

Duties.

3. Every receiver so appointed shall—

(*a*) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;

(*b*) submit his accounts at such periods and in such form as the Court directs ;

(*c*) pay the amount due from him as the Court directs ; and

(*d*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of receiver's duties.

4. Where a receiver—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the amount due from him as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

When Collector may be appointed receiver.

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI.

Appeals from Original Decrees.

Form of appeal. What to accompany memorandum.

1. (*1*) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively. When Burmese dates are given the corresponding English dates shall be added. The memorandum shall also contain :—

(i) the full names and addresses of all parties ;
(ii) particulars (class, number, year and Court) of the original proceedings ;
(iii) the value of the appeal (*a*) for court-fees, and (*b*) for jurisdiction.

Material corrections or alterations shall be authenticated by the initials of the person signing the memorandum.

(*3*) The appellant shall present, along with the petition of appeal, as many copies on plain paper of the grounds of appeal as there are respondents.

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal ; but the appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule :

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum.

3. (*1*) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(*2*) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(*3*) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of Proceedings and of Execution.

Stay by appellate Court.

5. (*1*) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree.

(*2*) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(*3*) No order for stay of execution shall be made under sub-rule (*1*) or sub-rule (*2*) unless the Court making it is satisfied--

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made;

(*b*) that the application has been made without unreasonable delay; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(*4*) Notwithstanding anything contained in sub-rule (*2*), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

Security in case of order for execution of decree appealed from.

6. (*1*) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the appellate Court, or the appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. * * * *

Exercise of powers in appeal from order made in execution of decree.

8. The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on Admission of Appeal.

Registry of memorandum of appeal.

9. (1) Where a memorandum of appeal is admitted, the appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals.

(2) Such book shall be called the Register of Appeals.

Appellate Court may require appellant to furnish security for costs.

10. (1) The appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards, on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of the Union of Burma.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of the Union of Burma, and is not possessed of any sufficient immoveable property within the Union of Burma other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

Power to dismiss appeal without sending notice to lower Court.

11. (1) The appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

Day for hearing appeal.

12. (1) Unless the appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(*2*) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Appellate Court to give notice to Court whose decree appealed from.

13. (*1*) Where the appeal is not dismissed under rule 11, the appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Transmission of papers to appellate Court.

(*2*) Where the appeal is from the decree of a Court the records of which are not deposited in the appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the appellate Court.

Copies of exhibits in Court whose decree appealed from.

(*3*) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

Publication and service of notice of day for hearing appeal.

14. (*1*) Notice of the day fixed under rule 12 shall be affixed in the appellate Court-house, and a like notice shall be sent by the appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

(*2*) Instead of sending the notice to the Court from whose decree the appeal is preferred, the appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

Notice unnecessary to respondent who did not appear in original suit.

(*3*) Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to an opposite party or respondent who did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court, or on or to the legal representative of any such opposite party or respondent if deceased.

Contents of notice.

15. The notice to the respondent shall declare that, if he does not appear in the appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

Right to begin.

16. (*1*) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(*2*) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

Dismissal of appeal for appellant's default.

17. (*1*) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Hearing appeal *ex parte*.

(*2*) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed:

Provided that no such order shall be made although the notice has not been served upon the respondent if on any such day the respondent appears when the appeal is called on for hearing.

Re-admission of appeal dismissed for default.

19. Where an appeal is dismissed under rule 11, sub-rule (*2*), or rule 17 or rule 18, the appellant may apply to the appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

Re-hearing on application of respondent against whom *ex parte* decree made.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

22. (*1*) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow.

(*2*) Such cross-objection shall be in the form of a memorandum and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto. Form of objection and provisions applicable thereto.

(*3*) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(*4*) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(*5*) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand. Remand of case by appellate Court.

24. Where the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the appellate Court proceeds. Where evidence on record sufficient, appellate Court may determine case finally.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate Court essential to the right decision of the suit upon the merits, the appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; Where appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

and such Court shall proceed to try such issues, and shall return the evidence to the appellate Court together with its findings thereon and the reasons therefor.

Findings and evidence to be put on record. Objections to finding.

26. (*1*) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the appellate Court, present a memorandum of objections to any finding.

Determination of appeal.

(*2*) After the expiration of the period so fixed for presenting such memorandum the appellate Court shall proceed to determine the appeal.

Production of additional evidence in appellate Court.

27. (*1*) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. But if—

(*a*) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(*b*) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate Court may allow such evidence or document to be produced, or witness to be examined.

(*2*) Wherever additional evidence is allowed to be produced by an appellate Court, the Court shall record the reason for its admission.

Mode of taking additional evidence.

28. Wherever additional evidence is allowed to be produced, the appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the appellate Court.

Points to be defined and recorded.

29. Where additional evidence is directed or allowed to be taken, the appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in Appeal.

Judgment when and where pronounced.

30. The appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

Contents, date and signature of judgment.

31. The judgment of the appellate Court shall be in writing and shall state—

(*a*) the points for determination;

(*b*) the decision thereon;

(*c*) the reasons for the decision; and,

(*d*) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled ;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

What judgment may direct.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the appellate Court may pass a decree or make an order accordingly.

Power of Court of Appeal.

33. The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree, and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection :

Provided that the appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration.

A claims a sum of money as due to him from *X* or *Y*, and in a suit against both obtains a decree against *X*. *X* appeals and *A* and *Y* are respondents. The appellate Court decides in favour of *X*. It has power to pass a decree against *Y*.

Dissent to be recorded.

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in Appeal.

Date and contents of decree.

35. (*1*) The decree of the appellate Court shall bear date the day on which the judgment was pronounced.

(*2*) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(*3*) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(*4*) The decree shall be signed and dated by the Judge or Judges who passed it :

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the appellate Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed from.

37. A copy of the judgment and of the decree, certified by the appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate Court shall be made in the register of civil suits.

ORDER XLII.

Appeals from Appellate Decrees.

Procedure.

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

ORDER XLIII.

Appeals from Orders.

Appeals from orders.

1. An appeal shall lie from the following orders under the provisions of section 104, namely :—

(*a*) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court ;

(*b*) an order under rule 10 of Order VIII pronouncing judgment against a party ;

(*c*) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;

(*d*) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ;

(*e*) an order under rule 4 of Order X pronouncing judgment against a party ;

(*f*) an order under rule 21 of Order XI ;

(*g*) an order under rule 10 of Order XVI for the attachment of property ;

(*h*) an order under rule 20 of Order XVI pronouncing judgment against a party ;

(*i*) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement ;

(*ii*) a garnishee order under rule 63C or rule 63E, and an order as to costs in garnishee proceedings under rule 63G, of Order XXI ;

(*j*) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale ;

(*k*) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit ;

(*l*) an order under rule 10 of Order XXII giving or refusing to give leave ;

(*m*) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction ;

(*n*) an order under rule 3 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;

(*o*) an order under rule 2, rule 3 or rule 4 of Order XXXIV refusing to extend the time for the payment of mortgage-money ;

(*p*) orders in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV ;

(*q*) an order under rule 2, rule 3 or rule 6 of Order XXXVIII ;

(*r*) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX ;

(*s*) an order under rule 1 or rule 4 of Order XL ;

(*t*) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal ;

(*u*) an order under rule 23 of Order XLI remanding a case where an appeal would lie from the decree of the appellate Court ;

[1](*v*) an order, made by any Court other than the High Court refusing the grant of a certificate under rule 6 of Order XLV ;

(*w*) an order under rule 4 of Order XLVII granting an application for review.

Procedure.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

ORDER XLIV.

Pauper Appeals.

Who may appeal as pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable :

Procedure on application for admission of appeal.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into pauperism.

2. The inquiry into the pauperism of the applicant may be made either by the appellate Court or under the orders of the appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in

[1] Order XLV has been deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

respect of his pauperism shall be necessary, unless the appellate Court sees cause to direct such inquiry.

ORDER XLV.[1]

* * * * *

ORDER XLVI.

Reference.

Reference of question to High Court.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Court may pass decree contingent upon decision of High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred ; but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

Judgment of High Court to be transmitted, and case disposed of accordingly.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Costs of reference to High Court.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Power to alter, etc., decree of Court making reference.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to refer to High Court questions as to jurisdiction in small causes.

6. (*1*) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstances appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII.

Review.

Application for review of judgment.

1. (1) Any person considering himself aggrieved—

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

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

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

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate Court the case on which he applies for the review.

To whom applications for review may be made.

2. An application for review of a decree or order of a Court, not being the High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a

clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (*a*), be disposed of by his successor.

Form of applications for review.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Application where rejected.

4. (*1*) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted.

(*2*) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(*a*) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(*b*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Application for review in Court consisting of two or more Judges.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application where rejected.

6. (*1*) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(*2*) Where there is a majority, the decision shall be according to the opinion of the majority.

Order of rejection not appealable. Objections to order granting application.

7. (*1*) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

(*a*) in contravention of the provisions of rule 2,

(*b*) in contravention of the provisions of rule 4, or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(*2*) Where the application has been rejected in consequence of the failure of the applicant to appear he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(*3*) No order shall be made under sub-rule (*2*) unless notice of the application has been served on the opposite party.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit. Registry of application granted, and order for re-hearing.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained. Bar of certain applications.

ORDER XLVIII.

Miscellaneous.

1. (*1*) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs. Process to be served at expense of party issuing.

(*2*) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued. Costs of service.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons. Orders and notices how served.

3. The forms given in the appendices, or such forms as may be prescribed by the High Court, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned. Use of forms in appendices.

ORDER XLIX.

The High Court.

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to Who may serve processes of the High Court.

respondents, may be served by the advocates in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

Saving in respect of the High Court.

2. Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by the High Court.

Application of rules.

3. The following rules shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely :—

(1) rule 10 and rule 11, clauses (*b*) and (*c*), of Order VII ;
(2) rule 3 of Order X ;
(3) rule 2 of Order XVI ;
(4) rules 5, 6, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII ;
(5) rules 1 to 8 of Order XX ; and
(6) rule 4 of Order XXXIII (so far as relates to the making of a memorandum) ;

and rule 35 of Order XLI shall not apply to the High Court in the exercise of its appellate jurisdiction.

ORDER L.

Small Cause Courts.

Small Cause Courts.

1. The provisions hereinafter specified shall not extend to Courts constituted under the Burma Small Cause Courts Act or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say —

(*a*) so much of this Schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits ;
(ii) the execution of decrees against immoveable property or the interest of a partner in partnership property ;
(iii) the settlement of issues ; and

(*b*) the following rules and orders :—

Order II, rule 1 (frame of suit) ;
Order X, rule 3 (record of examination of parties) ;
Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment ;
Order XVIII, rules 5 to 12 (evidence) ;
Orders XLI to XLV (appeals) ;
Order XLVII, rules 2, 3, 5, 6, 7 (review).

ORDERS LI AND LII.[1]

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ORDER LIII.[2]

Rangoon City Civil Court Rules.

PART I.

Preliminary.

1. These rules may be called the *Rangoon City Civil Court Rules*, and shall apply to all proceedings hereafter to be instituted in the Rangoon City Civil Court, and, as far as may be, to all proceedings that may be transferred to it under section 39 of the Rangoon City Civil Court Act.

2. In these rules unless there be something repugnant in the subject or context,—

(1) " the Act " means the Rangoon City Civil Court Act ;
(2) " Bailiff " means any Bailiff of the Court ;
(3) " the Code " means so much of the Code of Civil Procedure, together with the Schedules and Appendices thereto, as is not expressly or impliedly excluded by the Act or these rules ;
(4) " prescribed " means prescribed by these or any duly authorized rules or orders or by the Code ;
(5) " process " includes a summons to a defendant or to a witness, a notice or any other process (not being a warrant) which has to be served through the Court.

3. The procedure to be followed in the Court shall be that laid down in the Code, subject to the provisions of the Act and of these rules.

4. All plaints, written statements, affidavits, petitions and other proceedings presented to the Court shall be in English and written or typewritten or printed, fairly and legibly, and in the prescribed form :

Provided always that in proceedings to which all the parties are Burmans and in which the relief sought does not exceed Rs. 500, all pleadings, petitions and affidavits may be written, typed or printed in Burmese.

5. Written statements, petitions and affidavits, unless filed in Court or before the Registrar, shall be presented to the Chief Clerk or to such other officer as may be appointed in that behalf, in like manner as is hereinafter provided for the presentation of plaints.

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[1] Order LI was omitted by the Government of Burma (Adaptation of Laws) Order, 1937.
Order LII was omitted by High Court Notification No. 53, dated the 18th November, 1940.

[2] This Order was substituted by High Court Notification No. 1 (Schedule), dated the 27th February 1946. These rules are also printed at page 150 and following pages in Volume I of this Code.

6. It is competent for the Chief Clerk to administer oaths to the deponents of affidavits to be filed in Court.

7. Copies of pleadings, petitions and affidavits must be served on the opposite party not less than 48 hours before the date fixed for hearing.

8. Unless the necessary process fees payable on a plaint or petition are paid within 48 hours from its admission, the suit or petition may be dismissed.

Institution of Suits—The Plaint, its Presentation and Admission.

9. Every suit shall be instituted by the presentation of a plaint.

10. The subject-matter of the plaint shall be divided into paragraphs numbered consecutively and each paragraph shall contain as nearly as may be a single allegation. Where a Burmese or Indian date is given the corresponding English date shall be added. The names, descriptions and places of residence of the parties must be fully set out in the title or the omission to do so must be satisfactorily explained.

11. A plaint shall be presented to the Chief Clerk of the Court or to such other officer as the Chief Judge may from time to time appoint in that behalf. If the plaint be reasonably legible and be properly stamped, signed and verified and otherwise admissible in accordance with the provisions of the Code and of these rules it shall be received and a receipt shall be granted to the person presenting it. A diary form for the suit shall thereupon be opened by such Chief Clerk or other officer, who shall enter therein the name of the person presenting the plaint, the date of presentation and the documents (if any) produced or filed with the plaint.

12. There shall be filed with the plaint as many copies thereof as there are defendants to the suit. The Chief Clerk or such other officer as aforesaid shall thereupon place the plaint with the diary form before the Registrar for his written order for the admission of the plaint and his direction for summons to issue upon payment of the necessary fees.

13. If it appears to the Registrar that the plaint should for any reason be amended or rejected, the matter shall be placed in the daily cause list on a suitable date before the Registrar for admission and the Registrar shall then deal with the matter in question or (if so desired) place the matter for admission before the Judge to whom such case would ordinarily be assigned.

14. If the person desiring to verify a plaint is not a party to the suit he shall obtain leave from the Registrar to verify and his application in that behalf shall be supported by affidavit showing his connection with the case and how the allegations made come within his knowledge or belief.

15. An agent desiring to institute a suit shall at the time of presenting the plaint produce his power-of-attorney for the scrutiny of the Chief Clerk or such other officer as aforesaid who shall examine it and note its production in the diary, and the power-of-attorney shall be returned with a warning that it must be produced on the day of hearing for inspection.

16. (*1*) When an original document is produced by the plaintiff under Order VII, rule 14, of the Code, the Chief Clerk shall put thereon his initials and a note of the date of presentation.

(2) If a copy of such document is delivered to be filed with the plaint instead of the original, the Chief Clerk shall compare the copy with the original and certify as to its correctness by endorsement.

17. When a plaint has been admitted it shall be numbered and registered as a suit duly instituted and the Chief Clerk or other officer as aforesaid shall upon receipt of the proper fees issue a summons directed to each defendant.

Summons—Its Service and the Service of Processes generally.

18. The summons to the defendant shall require the defendant or defendants to enter appearance before the Registrar upon a date to be therein mentioned.

19. (*1*) In all suits for sums not exceeding Rs. 150 the summons shall be for final disposal.

(*2*) In all suits the value of which exceeds Rs. 1,000 the summons shall be for the settlement of issues.

(*3*) And in all other suits the Registrar 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.

20. (*1*) In all suits in which summons is for the settlement of issues the defendant when he enters appearance shall be given an opportunity of filing a written statement in answer to the plaintiff's claim and the suit shall be assigned to a particular Judge for trial and a date fixed for hearing.

(*2*) In all other suits a verbal defence may be recorded unless for any reason the Court considers a written statement desirable in the circumstances.

21. Ordinarily the interval between the date of issue of a summons and the day fixed for the appearance of the defendant or defendants shall not be less than—

(*a*) where all the defendants reside within the local limits of the jurisdiction of the Court—

(1) in suits the value of which exceeds Rs. 1,000—fourteen days;

(2) in all other cases—ten days;

(*b*) where any one defendant resides in the Union of Burma but beyond the local limits of the jurisdiction of the Court—twenty-eight days ;

(*c*) where any one defendant resides in India or Pakistan—eight weeks ;

(*d*) where any one defendant resides out of India or Pakistan and the Union of Burma—three months.

22. Ordinarily a defendant residing within the local limits of the jurisdiction of the Court shall not be deemed to have had sufficient time to appear and answer unless the process was served on him not less than three clear days before the day fixed for appearance.

23. All processes and warrants, except committal and release warrants, shall be signed, sealed and issued by the Chief Clerk. Committal and release warrants and commissions shall be signed by the Judge who ordered their issue or by the Registrar on his behalf.

24. Processes or warrants for service or execution within the local limits of the jurisdiction of the Court shall be delivered for service or execution to the Bailiff, who shall endorse thereon the date of receipt by him. If the person to be served is known to the Bailiff, or to any of his staff, the Bailiff shall cause the process to be served forthwith. If the person to be served is not so known the Bailiff shall require the party applying for the process to provide some person to identify the person to be served and shall fix a time when one of the officers will be ready to proceed to effect service.

25. Processes for service in the Union of Burma but beyond the local limits of the jurisdiction of the Court shall, unless otherwise directed, be sent by post to a Court at the headquarters of a township in which the person to be served resides. If the process is to be served out of the Union of Burma it shall be served in the manner prescribed by Order V, rules 21, 21A, 25, 25A and 26 of the Code, and if the process has to be sent to any Court having jurisdiction in the place where the defendant resides, the party at whose instance the process is issued shall name such Court.

26. Unless otherwise ordered a second or subsequent process shall not be issued until the previous one has been returned.

27. Proof of service may be made by affidavit. Such affidavits must state fully all particulars which must necessarily be proved before the summons or process can be held to have been duly served. The Bailiff is empowered to administer the oath to the deponents of such affidavits.

28. No summons or other process shall be served or executed on a Sunday, Christmas Day or Good Friday except by the special leave of the Court.

Appearance.

29. If the defendants or any of them do not appear and the Court is satisfied that they have been duly served with the summons the suit shall be heard *ex-parte* as regards such defendants or any of them.

30. If the defendants or any of them do appear and wish to defend the suit, the Registrar shall either direct such defendants or defendant to file a written statement before the Judge to whom such case is assigned for trial, allowing such time as may be reasonable for the purpose, or direct that the case be placed before such Judge the following Court day for orders.

31. Advocates or pleaders instructed to appear and defend on behalf of any one or more defendants in a suit may enter appearance on his or their behalf at any time before the date for appearance by formal notice in writing addressed to the Chief Clerk and may at the same time file written statements in answer to the plaintiff's claim and the case will thereupon be placed for orders before the Registrar.

32. (*1*) A minor can only enter appearance by his guardian *ad litem*. And the Court shall, upon being satisfied of such incompetence, appoint a proper person to be such guardian upon application made to it either in the name or on behalf of such minor or by the plaintiff.

(*2*) (*a*) If on an application by the plaintiff, and after due notice to the proposed guardian and to the minor, the proposed guardian is not appointed, the Court may appoint one of its officers to act as guardian *ad litem*.

(*b*) In such case no notice need issue save to the officer concerned, and upon his signifying to the Court his consent to act as a guardian, the order appointing him shall be made, and he shall thereupon endeavour to get into communication with the minor's natural guardian or relatives with a view to ascertaining what defence should be pleaded in answer to the plaintiff's claim.

(*c*) The Court may at any time direct the plaintiff or other party having the conduct of the case to pay into Court a sum sufficient to defray such minor's expenses in defending the suit.

(*3*) The procedure provided for by this rule with regard to minors shall be adopted *mutatis mutandis* with regard to persons of unsound mind.

33. Upon a written statement being filed or a verbal defence recorded the Judge to whom such case is assigned shall fix a date for trial, unless the matter can be disposed of on the pleadings.

34. Subject to the control of the High Court, the Chief Judge may from time to time make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof. And he may withdraw any suit or proceeding from any Judge and transfer it to himself or to any other Judge for disposal.

Daily File and Cause Lists.

35. All pending cases shall be entered in the daily file under the respective dates fixed for hearing.

36. A daily cause list for each Judge and one for the Registrar shall be prepared from the daily file and shall show the matters for disposal in such order as the Chief Judge shall direct.

37. Cases in the daily list shall be called on in turn in the order in which they appear in the list.

38. The daily cause lists shall be affixed to the Court notice boards daily before the Court opens.

Documents filed in Court.

39. The Chief Clerk is authorized to permit a party or his pleader to inspect in his presence or in the presence of an officer of the Court any document filed in a suit or proceeding in which he is a party or pleader.

40. Subject to the provisions of Order XIII, rule 9, of the Code, documents filed in Court may be returned after fifteen days from the date of judgment unless the proceedings have in the meanwhile been sent for by the High Court.

41. No document not in the English language shall (unless the Court otherwise orders) be read or received in evidence without an authorized translation thereof :

Provided that in cases in which the pleadings may be in Burmese, translations shall not be required of documents written in the Burmese language.

42. The Bench Clerks shall make and sign the endorsements required by Order XIII, rules 4 and 6, of the Code, on documents admitted or rejected.

Summons to Witnesses.

43. A party or his pleader may apply for a summons to a witness in any suit or proceeding at any time after its institution and during its pendency. The application shall be presented to the Chief Clerk. If the Chief Clerk thinks that for any reason it should not be granted, he shall take the orders of the Registrar on the point.

44. The party applying shall, within twenty-four hours from the time when the application is filed, pay to the Bailiff such sum for the travelling and

other expenses of the person or persons summoned as the Bailiff may direct according to the following scale [1]:—

	Maximum.			Minimum.		
	Rs.	A.	P.	Rs.	A.	P.
Soldiers, mariners, labourers, carriers, domestic servants, sircars, etc.	2	0	0	1	2	0
Tradesmen	6	0	0	2	0	0
Merchants, managers of banks, zemindars, gentlemen of property.	16	0	0	4	0	0
Auctioneers, brokers, professional accountants	10	0	0	3	0	0
Professional men	16	0	0	4	0	0
Editors, engineers and surveyors	10	0	0	4	0	0
Officers in civil employ drawing not less than Rs. 500 a month, according to rank.	16	0	0	6	0	0
Military and naval officers, according to rank	16	0	0	6	0	0
Shroffs, bunnias, schoolmasters, commanders and officers of ships.	8	0	0	3	0	0
Articled and other clerks	8	0	0	3	0	0
Police Inspectors, petty officers, military and marine ...	6	0	0	3	0	0
Customs-house officers and engine-drivers	6	0	0	3	0	0
Godown sircars	3	0	0	1	8	0
Females according to station	6	0	0	1	2	0

In special cases or in cases not provided for in the scale, the Court shall allow such fees as it thinks fit:

Provided—

Firstly,—that in cases to which Government or a local authority is a party—

(*a*) no payment into Court will be required for the travelling and other expenses of a servant of Government or of a local authority who may be required to be summoned at the instance of Government or the local authority respectively to give evidence in his official capacity;

(*b*) the amount to be paid into Court for the travelling and other expenses of a servant of Government or of a local authority whose salary exceeds [Rs. 30] [2] and who may be required to be summoned at the instance of a party other than the Government or the local authority respectively to give evidence in his official capacity in a Court situate at a distance of more than five miles from his headquarters shall be equivalent to the travelling and halting allowances admissible under the rules applicable to him in his official capacity.

[1] This scale was substituted by High Court Notification No. 3 (Schedule), dated the 8th October 1948.

[2] Substituted for "Rs. 10" by the same notification.

Secondly,—a servant of Government or of a local authority whose salary exceeds [Rs. 30][1] per mensem giving evidence in his official capacity in a suit to which Government or the local authority respectively is a party—

(*a*) when giving evidence at a place more than five miles from his headquarters shall not receive anything under these rules, but shall be given a certificate of attendance ;

(*b*) when giving evidence at a place not more than five miles from his headquarters shall, in cases where the Court considers it necessary, receive under these rules actual travelling expenses, but shall not receive subsistence, special nor expert allowances.

Thirdly,—a servant of Government or of a local authority whose salary does not exceed [Rs. 30][1] per mensem giving evidence in his official capacity shall receive his expenses from the Court.

[NOTE.—When the journey has to be performed partly by rail or steam-boat and partly by road or by boat, the fare shall be paid in respect of the former and the mileage or boat allowance in respect of the latter part of the journey.]

Railway servants summoned by the Court as witnesses, and travelling by rail to attend the Court, shall be paid the railway fare to which they are entitled under the rules for the payment of witnesses without regard to the fact that they may have travelled under a pass and not on actual payment of the fares.

45. The Chief Clerk shall issue summonses as soon as possible after the Bailiff has endorsed on the application his receipt for the money paid.

46. Fees paid to witnesses otherwise than through the Bailiff shall be certified to the Court before a witness is examined, and if not so certified shall not be allowed in taxation of costs.

47. In cases where the witnesses reside beyond the local limits of the jurisdiction of the Rangoon City Civil Court, the Bailiff shall remit the expenses of the witnesses by money-order to the Court to which the summons is to be sent for service.

48. The Bailiff shall receive all money sent by other Courts as expenses of witnesses and commissions.

49. On receipt of a summons to a witness issued by another Court, the Chief Clerk shall send it to the Bailiff, who shall note on it whether any and, if so, what money has been received as expenses of the witness. If the money received as expenses are sufficient, the Chief Clerk shall then make an order for the issue of the summons.

50. On receiving a commission for the examination of a witness from another Court, the Chief Clerk shall send it to the Bailiff, who shall note on it whether any and, if so, what money has been received as expenses of the witness.

[1] Substituted for "Rs. 10" by High Court Notification No. 3 (Schedule), dated the 8th October 1948.

If sufficient money has been received, the Chief Clerk shall make an order for the issue of the summons to the witness.

51. Any money received as expenses of witnesses which remains unexpended shall be returned by the Bailiff to the Court of issue, under the orders of the Registrar.

Commissions.

52. The hearing of a suit in which a commission has been issued under Order XXVI of the Code shall be postponed until the return of the commission, unless the Court otherwise directs.

53. An application for a commission shall be made promptly after the grounds on which it is asked for are known, and shall be accompanied by an affidavit or affidavits, setting out the facts relied upon as grounds for the issue of the commission, and stating when they first became known to the applicant.

54. In commissions for the examination of witnesses which are addressed to the Court and in which the delegation of the Commissioner's duties to an advocate or pleader has not been authorized, the Court or the Registrar shall have power to appoint such advocate or pleader or official of the Court as he may determine to execute the commission.

55. (*1*) When an order for the issue of a commission to take evidence on interrogatories has been made, the party obtaining the order shall, within seven days from the date thereof, file his interrogatories, and the documents, if any, to accompany the commission, and shall serve a copy of the interrogatories on the other party or his pleader, who shall file his cross-interrogatories, with the documents, if any, to accompany the same within seven days from such service, and shall serve a copy on the other party or his pleader.

(*2*) If the commission is for the examination of witnesses *viva voce* the party obtaining the order shall file a list of witnesses, and all necessary papers and documents, within seven days from the date of the order.

56. The party obtaining an order for a commission shall pay the necessary costs of and incident to the same within seven days of the date of the order.

57. On default in the observance of these rules by a party obtaining an order for a commission, the commission shall not issue without leave of the Court, and on default by the opposite party he shall not be allowed to join in the commission without such leave.

Hearing.

58. Proper time must be taken to see that parties are accurately joined and that the real points in issue are settled; but when the case has once been set down for trial and the parties with their witnesses are in attendance, the case should be tried the same day and continued from that day to the next and so on until the hearing of evidence is completed, unless there are reasons, which must be recorded in writing, for an adjournment.

Judgments, Orders and Decrees.

59 (*1*) In all suits of over Rs. 1,000 in value the evidence shall be recorded in manner provided by Order XVIII, rule 5, and the judgments shall contain the particulars required by Order XX, rule 4 (*2*), of the Code.

(*2*) In all other suits Order XVIII, rules 5 to 12, shall not apply and judgments shall be in accordance with the provisions of Order XX, rule 4 (*1*), of the Code.

60. (*1*) Except orally delivered judgments taken down in shorthand, judgments and orders shall be pronounced only after they are written. All judgments and orders shall bear the date on which they are delivered.

(*2*) Decrees shall bear the date of delivery of judgment, and also the date of signature in the hand of a Judge.

(*3*) If a party or his pleader intimates to the Chief Clerk immediately after a judgment or order has been passed by a Judge that he wishes to see the formal decree or order before it is submitted for signature, he may be allowed to do so, and if there is any disagreement as to the form of decree or order, or the taxing of the costs, the case shall be set down on the daily list, on as early a date as may be convenient, to speak to the minutes of decree.

61. When the Court directs that any decree may be paid by instalments, such instalments shall, in the absence of any direction to the contrary, be paid into Court monthly, and, in default of payment of any one instalment, the whole decree or the balance thereof shall become due.

Execution Proceedings.

62. Every application for executing a decree shall be in the prescribed form and shall be presented to the Chief Clerk, or such other officer as the Chief Judge may appoint in that behalf, and the application shall, after examination and check by the Execution Clerk, be put up for orders before the Registrar or the Judge who passed the decree with a report endorsed thereon as to whether the requirements of the Code and of these rules have been complied with.

63. Applications under section 39 of the Code to send a decree or order for execution to another Court shall be made by verified petition, and shall be accompanied by a certified copy of the decree or order.

64. The certified copy, together with the other documents mentioned in Order XXI, rule 6, of the Code, shall be sent by registered post.

65. The process fees prescribed for the warrant of attachment and for the order of sale shall be annexed to every application for execution by attachment and sale of property.

66. In every application for the attachment of moveable property the approximate value of the property sought to be attached shall be stated according to the best of the applicant's belief.

67. In applications for execution by attachment of moveable property it shall be expressly stated whether the property sought to be attached is in the possession of the judgment-debtor or not, and the place where the property is to be found shall be clearly indicated.

68. A warrant issued under Order XXI, rule 24, of the Code, shall be returnable within one month from the date thereof.

Sale of Attached Moveable Property.

69. As soon as possible after an attachment of moveable property, the Bailiff shall report to the Court the fact of the attachment and shall furnish a list of the articles attached and their approximate value, and shall note if any of them are not liable to attachment or sale.

If any of the articles or things fall within the proviso to Order XXI, rule 43, of the Code, it shall be so stated in the report and list.

70. The report and list shall be submitted to the Court concerned which shall pass such order for sale as it may think fit, although the decree-holder may not apply for a sale order. A warrant for sale shall be sent to the Bailiff, who shall forthwith prepare and issue a proclamation.

71. Every proclamation shall be advertised in a local newspaper or advertiser for at least fifteen days (except in the case of property mentioned in the proviso to Order XXI, rule 43, of the Code), and no proclamation shall issue until the person applying for sale has deposited with the Bailiff an amount sufficient to defray the expense of advertising.

72. Moveable property falling within the proviso to Order XXI, rule 43, of the Code shall be sold as soon as may be convenient after it has been attached. Other moveable property shall be sold on the third Saturday after the day on which the proclamation shall have been affixed on the Court-house.

Security to Court.

73. When security is required to be given it shall be taken either in cash or in the form of a bond. Such bond shall be with or without sureties as the Judge may direct, and shall be in favour of the Bailiff of the Court.

74. When sureties are required and persons resident within the jurisdiction of the Court are tendered, the Bailiff shall report whether the principal and sureties possess within the jurisdiction of the Court property of value equal to the amount of the security required.

75. No sureties shall, without the order of the Judge, be accepted unless they make an affidavit or affidavits stating that the property which each of them possesses, or that their properties combined, are equal in value to the amount of the security demanded, over and above any incumbrance to which such properties may be liable, and over and above the amount for which they have previously given security in the Court or in any other Court and for which they are at the time liable as sureties.

76. On the application of the Bailiff summonses may be issued to persons named by him to appear before him or to produce before him documents of title for the purpose of his enquiry into the value of the property of any person tendered as a surety.

Bailiff's Commission on Sales of Attached Property.

77. The Commission to be drawn by the Bailiff on sales of attached property shall be at the rate of 5 per cent.

The fees paid each month shall be drawn and disbursed to the Bailiff at the end of the month under the orders of the Registrar.

Applications generally.

78. All applications arising out of a suit shall bear the number of such suit unless they be applications for execution, for attachment, or arrest before judgment, for removal of attachment, for review of judgment, for sanction to prosecute, or miscellaneous applications which necessitate separate judicial proceedings, or in which the petitioner is not a party to the suit.

79. Every application in writing shall be in the form of a petition signed by the applicant or his recognized agent, or his pleader, and if the Court requires it to be verified shall be verified in the same manner as a plaint.

80. On receiving an application the Court shall (if necessary) direct notice to issue for service on the respondent together with a copy of the application, to be supplied by the applicant. The notice shall be served in the same manner as a summons and shall fix a date for the hearing of the application.

Applications to set aside Dismissal Orders or ex-parte *Decrees.*

81. The Court may, at any time after an application to set aside an order of dismissal or an *ex-parte* decree is presented to the Court, put the parties on such terms as to furnishing costs or for security for the amount of the claim and costs by payment into Court or otherwise as it shall think fit.

PART II.

Summary Procedure in certain cases.

82. This Part shall apply to suits on negotiable instruments when the value of the subject-matter does not exceed Rupees one thousand.

83. (*1*) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed with the original bill of exchange, hundi or promissory note annexed, together with as many copies thereof as there are defendants to the suit. The summons shall be in form F in the Appendix and it shall not be necessary to serve a copy of the plaint on the defendant.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the Court as hereinafter provided so to appear and defend; and in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree—

(*a*) for any sum not exceeding the sum mentioned in the summons with interest at the rate specified (if any) to the date of the decree; and

(*b*) for such sum for costs as may be prescribed:

Provided that if the plaintiff claims more than such sum fixed for costs, the costs shall be ascertained in the ordinary way.

(*3*) A decree passed under this rule may be executed forthwith.

Explanation.—For the application of this rule the summons to the defendant shall, unless otherwise ordered by the Court, have been served upon him—

(*a*) if he resides and is served within the local limits of the jurisdiction of the Court, at least ten clear days before the returnable date of the summons;

(*b*) if he resides and is served without such local limits but in the Union of Burma, at least fifteen clear days before the returnable date of the summons; and

(*c*) if he resides and is served in India or Pakistan, at least one month before the returnable date of the summons.

84. (*1*) The Court shall, upon application by the defendant, give leave to appear and to defend the suit upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration or such other facts as the Court may deem sufficient to support the application.

(*2*) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing or recording issues or otherwise as the Court thinks fit.

85. After decree the Court may under special circumstances set aside the decree, and, if necessary, stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

86. In any proceeding under this Part the Court may order the bill, hundi or note, on which the suit is founded, to be forthwith deposited with an officer of the Court and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

87. 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 Part for the recovery of the amount of such bill or note.

88. Save as provided by this Part, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

PART III.

Miscellaneous.

89. All acts which may be done by the Court in regard to the appointment or removal of a guardian *ad litem* under Order XXXII, rules 4 and 11, of the Code or in regard to the substitution or addition of parties to a suit may be done by the Registrar.

90. Any of these rules which require a Judge of the Court to do any act or thing shall be read as applying equally to a Registrar, when exercising any of the powers conferred upon him under sub-section (*1*) of section 34 of the Act or by these rules.

The Registrar is authorized to grant certificates under section 28 of the Act to parties in cases which have been disposed of by him.

91. Whenever any judgment-debtor who has been arrested or whose property has been seized in execution of a decree of the Court, or a decree of another Court transferred to it for execution, offers security to the satisfaction of the Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released upon his furnishing such security.

92. Subject to the approval of the High Court, the Court shall frame such forms as it may think necessary for any proceeding before it and may from time to time alter any of such forms.

93. After the disposal of every suit in which a pauper is concerned the Chief Clerk shall send to the Collector of Rangoon a memorandum of the court-fees due and payable by the pauper.

94. The following portions of Schedule I to the Code shall not extend to the Court, that is to say :—

(*a*) Order XLVII, rules 6 and 7 ; and

(*b*) Orders XLIX and L ; and

the following portions of the said Schedule shall not extend to the Court in the exercise of its jurisdiction as a Court of Small Causes, namely: —

(*a*) so much of the said Schedule as relates to—

(*i*) suits excepted from the cognizance of the Court or the execution of decrees in such suits ;

(*ii*) the execution of decrees against immoveable property or the interest of a partner in partnership property ; and

(*b*) Order X, rule 3 (record of examination of parties), and Order XIV.

95. The forms prescribed in the Appendix, with such variation as the circumstances may require, shall be used for the purposes therein mentioned.

APPENDIX.

FORMS.

A

TABULAR FORM OF APPLICATION FOR EXECUTION—PART I (RULE 62).

IN THE RANGOON CITY CIVIL COURT.

The Petition of **Holder of the Decree in Civil** **No.**

RESPECTFULLY SHEWETH—

That your petitioner, the decree-holder abovenamed, hereby applies for execution of the said decree upon the judgment-debtor, according to the particulars given in accordance with Order XXI, rule 11 (2), of the Code of Civil Procedure.

Rangoon. *195* ***Petitioner.***

The number of suit. (1)	The names of parties. (2)	The date of the decree. (3)	Whether any appeal has been preferred from decree. (4)	Whether any and what adjustment has been made between the parties since the decree. (5)	Whether any and what previous application has been made for execution of the decree and with what result. (6)	The amount of the debt or compensation with the interest if any due upon the decree or relief granted by decree. (7)				The amount of costs if any awarded. (8)	The name of person against whom enforcement of decree is sought. (9)	The mode in which the assistance of the Court is sought: 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 the property or otherwise. (10)
							Rs.	A.	P.	Rs. A. P.		
Civil Number 195						Amount decreed						
						Interests ...						
						Costs ...						
						Subsequent costs						
						Cost of this application ...						
						Total ...	—	—	—			
						Satisfied in part						
						Total Rs. ...	—	—	—			

I, the petitioner , declare that the contents in columns 1 to 10 of this petition are true to the best of my own knowledge and belief, and I sign this verification at Rangoon, the day of 195

Petitioner.

B

SUIT BY PAYEE OF PRO-NOTE AGAINST MAKER (RULE 83).

(*Cause Title.*)

Particulars—		Rs.	A.	P.
Principal	...			
Interest	...			
Costs	...			

The Plaintiff abovenamed states as follows :—

1. By a Promissory Note, dated the day of annexed hereto and marked with the letter A and duly executed by the Defendant in Rangoon for value received the Defendant promised to pay to the Plaintiff or order the sum of Rs. on demand together with interest at the rate of per cent. per annum.

2. The Defendant has not paid the same or any part thereof (or except the sum of Rs. for principal and Rs. for interest).

3. The sum of Rs. is now due to Plaintiff for principal and Rs. for interest.

The Plaintiff claims judgment for the sum of Rs. and for the costs, etc.

I, A.B., the Plaintiff abovenamed, do solemnly declare that I am personally acquainted with the facts of the case and that the facts stated in this Plaint are true to my knowledge.

(Signed) A.B.,
Plaintiff.

C

SUIT BY ENDORSEE OF A PRO-NOTE AGAINST MAKER AND ENDORSER (RULE 83).

(*Cause Title.*)

Particulars—		Rs.	A.	P.
Principal	...			
Interest	...			
Costs	...			

The Plaintiff abovenamed states as follows :—

1. By the Promissory Note, dated the day of annexed hereto and marked with the letter A, which was, as I am informed by C.D. and truly believe, duly executed by the first Defendant at Rangoon

for value received the said first Defendant promised to pay to the second Defendant the sum of Rs. on demand together with interest thereon at the rate of per cent. per annum.

2. On the day of 19 the second Defendant duly endorsed the promissory-note to me for valuable consideration.

3. The sum of Rs. is now due to Plaintiff for principal and Rs. for interest.

The Plaintiff claims judgment for the sum of Rs. and for the costs, etc.

I, A.B., the Plaintiff abovenamed, do hereby declare that except as to the matters stated to be on information and belief, which I believe to be true, I am personally acquainted with the facts of this case, and the facts stated in the Plaint are true to my knowledge.

(Signed) A.B.,
Plaintiff.

D

Suit by Payee of Cheque against Drawer (Rule 83).

(*Cause Title.*)

Particulars—		Rs.	A.	P.
Principal	...			
Interest	...			
Costs	...			

The Plaintiff abovenamed states as follows :—

1. On the day of 19 the Defendant for value received duly signed and delivered to the Plaintiff the cheque, dated the day of and drawn on the Bank for the sum of Rs. which is annexed hereto and marked with the letter A.

2. On the day of the said cheque was duly presented to the said bank and was dishonoured of which due notice was given to the Defendant.

3. The sum of Rs. is now due to the Plaintiff for principal and Rs. for interest.

The Plaintiff claims judgment for the sum of Rs. and for costs, etc.

E

SUIT BY THE ENDORSEE OF A BILL OF EXCHANGE AGAINST THE ACCEPTOR AND PAYEE (RULE 83).

(*Cause Title.*)

Particulars—	Rs.	A.	P.
Principal ...			
Interest ...			
Costs ...			
Notarial charges ...			

The Plaintiff abovenamed states as follows :—

1. The Bill of Exchange, dated the day of hereto annexed and marked with the letter A was drawn by X.Y. of upon the first Defendant for the sum of Rs. payable three months after date with interest at the rate of per cent. per annum, and was accepted by the first Defendant and endorsed by the second Defendant to the Plaintiff.

2. The said Bill was duly presented for payment on the day of and was dishonoured and the Plaintiff has incurred the following Notarial charges :—

3. The sum of Rs. is now due to Plaintiff for principal and Rs. for interest.

The Plaintiff claims judgment for the sum of Rs. and for costs, etc.

F

SUMMONS (RULE 83).

(*Cause Title.*)

To A.B. of (*address and description of Defendant*).

Whereas has instituted a suit against you under Part II of the Rangoon City Civil Court Rules for Rs. balance of principal and interest due to him as the payee (or endorsee or *as the case may be*) of a Promissory Note (or Bill of Exchange or hundi or *as the case may be*) of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court to appear and defend the suit. In default whereof the Plaintiff will be entitled to obtain a decree for the said sum and costs as mentioned below.

Leave to appear may be obtained on an application to the Court supported by affidavit 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.

The day of 19 is fixed for your appearance before the Judge of this Court.

Particulars of Claim.

(As stated in Plaint.)

Given under my hand and the seal of the Court this day of 19

Chief Clerk.

NOTE :—(1) If you admit the claim you should pay the money into Court together with the costs of the suit to avoid execution of the decree which may be against your person and property or both.

(2) The address for service of Plaintiff is—(*Insert address*).

ORDER LIV.

I.—*Classification of Civil Records.*

Classification of civil records.

1. The records of civil judicial proceedings, whether suits or cases, in all civil Courts, other than Small Cause Courts, and exclusive of suits and cases disposed of under Small Cause Court procedure by Courts invested with Small Cause Court jurisdiction, shall be divided into the following four classes :—

Class I.—Records of—

(*a*) suits and cases affecting immoveable property, including suits for foreclosure, redemption or sale, with the exception of cases on an application for removal of attachment ; suits in which any question relating to a title to land or to some interest in land, as between parties having conflicting claims thereto, is in issue ;

(*b*) suits in respect of the succession to an office, or to establish or set aside an adoption, or otherwise to establish the status of an individual ;

(*c*) suits relating to public trusts, charities or endowments, and any proceedings ancillary to such suits.

Class II.—Records of the following suits and cases, except such of them as affect immoveable property—

(*a*) all suits and cases for probate and letters of administration and for the revocation of the same ;

(*b*) cases under the Guardians and Wards Act, relating to the guardianship of minors and the administration of their property ;

(*c*) cases under the Lunacy Act, relating to the guardianship of lunatics and the care of their estates;

(*d*) administration suits.

NOTE.—An application by an executor or administrator, or by the guardian of a minor or lunatic, to sell, mortgage, etc., property belonging to the estate, is an application in the case and together with all the proceedings connected with it must form part of the record of the case.

Class III.—Records of—

(*a*) all suits which do not come under Class I or II ;

(*b*) cases on applications for the grant of a succession certificate ; cases under Parts III and IV of the Land Acquisition Act ; cases under the Burma Insolvency Act, other than those in which receivers appointed under that Act have transferred or otherwise dealt with immoveable property ; cases under the Code of Civil Procedure to transfer a decree when no application for execution is pending ;

(*c*) cases on an application for removal of attachment in which immoveable property is concerned ;

(*d*) such other cases as the High Court may from time to time direct to be included.

NOTE.—Proceedings under the Code of Civil Procedure for the restoration of a suit or appeal or for a review of judgment are proceedings in the suit or appeal and must form part of the record relating thereto.

Class IV.—Records of—

(*a*) execution proceedings in which any order affecting immoveable property is passed ;

(*b*) all other execution proceedings.

NOTE.—Each application for execution shall be treated as a separate case, the record of which shall include the papers on all matters connected with the execution from the date on which the application was presented until it is finally disposed of.

In these rules the word "suit," "case" or "proceeding" includes an appeal, revision or reference ; and if the suit, case or proceeding comes under two or more of the above four classes, the records of such suit, case or proceeding shall be classified under that class for which the period of preservation is longest.

NOTE.—It is directed that records of cases under section 14 of the Legal Practitioners Act shall be included in Class III of the Rules for the Classification of Civil Records.

II.—*Arrangement of Records.*

Arrangement of records under Classes I, II and III.

2. Every record under Classes I, II and III shall be divided as the trial proceeds into three files, A, AA and B, provided that if there are no documentary exhibits the AA file may be omitted.

File A shall be called the trial record and, in cases other than appeals, shall contain besides the flyleaf with index of contents :—

(*a*) diary ;
(*b*) plaint or petition instituting the case ;
(*c*) plans attached to the plaint to define the land sued for ;
(*d*) list of documents produced with the plaint when not endorsed on the plaint, Order VII, rule 9 ;
(*e*) list of documents relied on by plaintiff, but not produced, Order VII, rule 14 ;
(*f*) list of documents produced by the parties at the first hearing, Order XIII, rule 1 (*2*) ;
(*g*) written statements or counter-petitions of the parties ;
(*h*) petitions, proceedings, and orders in interlocutory matters ; and summonses on defendants and process-servers' reports and affidavits of process-servers and identifiers with the orders of the Court thereon in *ex parte* cases ;
(*i*) opening proceedings ;
(*j*) issues ;
(*k*) oral evidence for plaintiff [1] taken in Court and on commission ;
(*l*) oral evidence for defendant [2] taken in Court and on commission ;
(*m*) report of Commissioner appointed under Order XXVI ;
(*n*) award of arbitrators or petition of compromise ;
(*o*) report or account of a receiver ;
(*p*) judgment ;
(*q*) decree ;
(*r*) final decree in mortgage or administration suits ;
(*s*) copies of orders and decrees in appeal and revision ;
(*t*) order absolute for sale in mortgage cases, together with proclamation, sale report, order of confirmation, and certificate of sale.

The judgment of the appellate Court, if any, shall be filed after the decree, and any further evidence recorded and any finding of the lower Court, together with the final order in appeal, shall be filed thereafter in that order.

File AA shall be called the exhibit record and shall contain besides the flyleaf and the table of contents ; —

(*a*) list of documents admitted in evidence for plaintiff ;[1]
(*b*) Documents [3] admitted in evidence for plaintiff ;[1]
(*c*) list of documents admitted in evidence for defendant ;[2]
(*d*) Documents [3] admitted in evidence for defendant.[3]

---

[1] Substitute " defendant " if defendant begins.
[2] Substitute " plaintiff " if defendant begins.
[3] Documents not admitted in evidence must not be filed with the record, but should be returned to the party who produced them.

File B shall be called the process record and shall contain besides the flyleaf with table of contents :—

(*a*) powers-of-attorney ;
(*b*) summonses and other processes and affidavits relating thereto;[1]
(*c*) lists of witnesses ;
(*d*) petitions relating to adjournments, attendance of witnesses, etc.;
(*e*) other papers not included in the Trial Record ;
(*f*) letters, etc., calling for records, etc.

Arrangement of records under Class. IV.

3. Every record under Class IV shall consist of two files, A and B. File A shall contain besides the flyleaf with table of contents :—

(*a*) diary ;
(*b*) application for execution ;
(*c*) papers received from Court which passed the decree, Order XXI, rule 6 ;
(*d*) plans of lands to be attached ;
(*e*) petitions, proceedings, and orders in interlocutory matters ;
(*f*) petitions objecting to the execution, other than claims under Order XXI, rule 58 ;
(*g*) warrants and prohibitory orders issued to effect execution by attachment or delivery of property, and returns thereto ;
(*h*) warrant of sale ;
(*i*) proclamation of sale ;
(*j*) report of result of sale ;
(*k*) order confirming sale ;
(*l*) copy of certificate of sale ;
(*m*) applications for payment of money in deposit and the orders thereon ;
(*n*) receipts or acknowledgments of satisfaction ;
(*o*) final order ;
(*p*) copy of order in appeal or revision.

File B shall contain all other papers.

Arrangement of records of an appellate Court.

4. The A file of the trial record of an appellate Court shall contain besides the flyleaf with table of contents :—

(*a*) diary ;
(*b*) memorandum of appeal ;
(*c*) copy of judgment and decree of lower Court ;
(*d*) written statements, if any ;
(*e*) petitions, proceedings, and orders in interlocutory matters ;
(*f*) oral evidence, if any ;

---

[1] Summonses on defendants and process-servers' reports and affidavits of process-servers and identifiers with the orders of the Court thereon in *ex parte* cases should be on the A file.

(*g*) judgment ;

(*h*) decree ;

(*i*) copy of judgment and decree in second appeal or revision.

The B file shall contain all other papers.

Records of Small Cause suits.

5. The records of suits decided by Small Cause Courts, or tried under Small Cause Court procedure, shall consist only of one file.

APPENDIX A.

FORMS.

PLEADINGS.

(1) TITLES OF SUITS.

IN THE COURT OF

A.B. (*add description and residence*) ... ... *Plaintiff.*

against

C.D. (*add description and residence*) ... ... *Defendant.*

(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

The Union of Burma.

The Attorney-General.

The Collector of

The State of

The *A.B.* Company, Limited, having its registered office at

A.B., a public officer of the *C.D.* Company.

A.B. (*add description and residence*), on behalf of himself and all other creditors of *C.D.*, late of (*add description and residence*).

A.B. (*add description and residence*), on behalf of himself and all other holders of debentures issued by the Company, Limited.

The Official Receiver.

A.B., a minor (*add description and residence*), by *C.D.*, his next friend.

A.B. (*add description and residence*), a person of unsound mind [*or* of weak mind], by *C.D.*, his next friend.

A.B., a firm carrying on business in partnership at

A.B. (*add description and residence*) by his constituted attorney *C.D.* (*add description and residence*).

A.B. (*add description and residence*), Trustee of the Pagoda at

A.B. (*add description and residence*), executor of *C.D.*, deceased.

A.B. (*add description and residence*), heir of *C.D.*, deceased.

(3) PLAINTS.

No. 1.

MONEY LENT.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 he lent the defendant rupees repayable on the day of 19

2. The defendant has not paid the same, except rupees paid on the day of 19

[*If the plaintiff claims exemption from any law of limitation, say* :—]

3. The plaintiff was a minor [*or* insane] from the day of till the day of 19

4. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]

5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees.

6. The plaintiff claims rupees, with interest at per cent. from the day of 19

No. 2.

MONEY OVERPAID.

(*Title.*)

A.B. the above-named plaintiff, states as follows :—

1. On the day of 19 the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. The plaintiff procured the said bars to be assayed by *E. F.*, who was paid by the defendant for such assay, and *E. F.* declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant rupees.

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , *E.F.* sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the schedule hereto annexed, *or* sundry goods].

2. The defendant promised to pay rupees for the said goods on delivery [*or* on the day of *some day before the plaint was filed*].

3. He has not paid the same.

4. *E.F.* died on the day of 19 . By his last will he appointed his brother, the plaintiff, his executor.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff as executor of *E.F.* claims [*relief claimed*].

No. .4

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. The goods were reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , *E.F.* agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that *E.F.* should pay for the goods on delivery rupees.

2. The plaintiff made the goods and on the day of 19 . offered to deliver them to *E.F.*, and has ever since been ready and willing so to do.

3. *E.F.* has not accepted the goods or paid for them.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 6.

DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.

5. On the day of 19 , the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. The expenses attendant upon such re-sale amounted to rupees.

7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No 7.

SERVICES AT A REASONABLE RATE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. Between the day of 19 , and the day of 19 , at , plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 8.

SERVICES AND MATERIALS AT A REASONABLE COST.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , at , the plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 9.

USE AND OCCUPATION.

(*Title.*)

A.B., the above-named plaintiff, executor of the will of *X.Y.*, deceased, states as follows :—

1. That the defendant occupied the [house No. street], by permission of the said *X.Y.*, from the day of 19

until the day of 19 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff as executor of *X.Y.* claims [*relief claimed*].

No. 10.

ON AN AWARD.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of *E.F.* and *G.H.*, and the original document is annexed hereto.

2. On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 11.

ON A FOREIGN JUDGMENT.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at , in the State [*or* Kingdom] of , the Court of that State [*or* Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 12.

AGAINST SURETY FOR PAYMENT OF RENT.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , *E.F.* hired from the plaintiff for the term of years, the [house No. , street], at the annual rent of rupees payable [monthly].

2. The defendant agreed, in consideration of the letting of the premises to *E.F.*, to guarantee the punctual payment of the rent.

3. The rent for the month of 19 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add* :—]

4. On the day of 19 , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 13.

BREACH OF AGREEMENT TO PURCHASE LAND.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

[*Or*, on the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty acres of land in the village of for rupees.]

2. On the day of 19 , the plaintiff being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [*or*, was ready and willing, and is still ready and willing and offered, to transfer the same to the defendant

by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 14.

NOT DELIVERING GOODS SOLD.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the day of 19 , and that the plaintiff should pay therefor rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 15.

WRONGFUL DISMISSAL.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly].

2. On the day of 19 , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the day of 19 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 16.

BREACH OF CONTRACT TO SERVE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19 , offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the abovementioned day, but afterwards on the day of 19 , he refused to serve the plaintiff as aforesaid.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 17.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [*Or state the tenor of the contract.*]

2. [The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 18.

ON A BOND FOR THE FIDELITY OF A CLERK.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff took *E.F.* into his employment as a clerk.

2. In consideration thereof, on the day of 19 , the defendant agreed with the plaintiff that if *E.F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[*Or*, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of rupees, subject to the condition that if *E.F.* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[*Or*, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the day of 19 , and the day of 19 , *E.F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 19.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(*Title.*)

A.B., the above-named plaintiff, states as follows;—

1. On the day of 19 , the defendant, by a registered instrument, let to the plaintiff [the house No. , street] for the term of years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the day of 19 , during the said term, *E.F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G.H.*, and *I.J.*, by such removal].

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 20.

ON AN AGREEMENT OF INDEMNITY.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day 19 , the plaintiff and defendant, being partners in trade under the style of *A.B.* and *C.D.*, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the day of 19 , [a judgment was recovered against the plaintiff and defendant by *E.F.*, in the High Court, upon a debt due from the firm to *E.F.* and on the day of 19 ,] the plaintiff paid rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 21.

PROCURING PROPERTY BY FRAUD.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of rupees.

3. The said representations were false [or *state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. [*Or, if the goods were not delivered.* The plaintiff, in preparing and shipping the goods and procuring their restoration, expended rupees.]

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 22.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the defendant represented to the plaintiff that *E.F.* was solvent and in good credit, and worth rupees over all his liabilities [*or* that *E.F.* then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to *E.F.* [rice] of the value of rupees [on months' credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or* to deceive and injure the plaintiff].

4. *E.F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the day 19 , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was possessed of certain lands called , situate in

2. Ever since the day of 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedge, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 25.

OBSTRUCTING A RIGHT OF WAY.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, *or* on foot] at all times of the year.

3. On the day of 19 , the defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles *or* on foot, *or* in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (*State special damage, if any.*)

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 26.

OBSTRUCTING A HIGHWAY.

(*Title.*)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the 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.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 27.

DIVERTING A WATER-COURSE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19 , the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 28.

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the day of 19 , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 29.

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the defendants were common carriers of passengers by railway between and

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at [*or* near the station of *or* between the stations of and], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

[*Or thus* :—2. On that day the defendants by their servants so negligently and 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, etc., *as in para. 3.*]

No. 30.

INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at The defendant is a merchant of

2. On the day of 19 , the plaintiff was walking northward along Phayre Street, in the City of Rangoon, at about 3 o'clock in the afternoon. He was obliged to cross Dalhousie Street, which is a street running into Phayre Street at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a motor vehicle belonging to the defendant, under the charge and control of the defendant's servant, was negligenly, suddenly and without any warning turned at a rapid and dangerous pace out of Dalhousie Street into Phayre Street. The vehicle struck the plaintiff and knocked him down, and he was run over by the vehicle.

3. By the blow and fall and being run over the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 31.

FOR MALICIOUS PROSECUTION.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant obtained a warrant of arrest from [a 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. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19 , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or* in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E.F.*; *or* in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*As in paras. 4 and 5 of Form No. 1, and relief claimed.*]

No. 32.

MOVEABLES WRONGFULLY DETAINED.

(*Title*).

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the day of 19 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

The Schedule.

No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant *C.D.*, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. The plaintiff was thereby induced to sell and deliver to *C.D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by *C.D.* to be so [*or* at the time of making the said representations, *C.D.* was insolvent, and knew himself to be so].

4. *C.D.* afterwards transferred the said goods to the defendant *E.F.* without consideration [*or* who had notice of the falsity of the representation].

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

No. 34.

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten acres].

2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3. On the day of 19 , the plaintiff paid the defendant rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five acres].

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims—

(1) rupees, with interest from the day of 19 ;

(2) that the said agreement be delivered up and cancelled.

No. 35.

INJUNCTION RESTRAINING WASTE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed.*]

No. 36.

INJUNCTION RESTRAINING NUISANCE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , street, Rangoon].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. On the day of 19 , the defendant erected upon his said plot a slaughter-house, and still maintains the same ; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37.

PUBLIC NUISANCE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The defendant has wrongly heaped up earth and stones on a public road known as street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Attorney-General [*or* of the Collector or other officer appointed in this behalf] to the institution of this suit.

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road ;

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

[*As in Form No. 27.*]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times herein after mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter],

and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].

2. On the day of 19 , he deposited the same for safe-keeping with the defendant.

3. On the day of 19 , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[*As in paras. 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];
(2) that he be compelled to deliver the same to the plaintiff.

No. 40.

INTERPLEADER.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. Before the date of the claims hereinafter mentioned *G. H.* deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant *C.D.* claims the same [under an alleged assignment thereof to him from *G.H.*].

3. The defendant *E.F.* also claims the same [under an order of *G.H.* transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[*As in paras. 4 and 5 of Form No. 1.*]

9. The plaintiff claims—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorized to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 41.

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. *E.F.*, late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of

[*Here insert nature of debt and security, if any.*]

2. *E.F.*, died on or about the day of . By his last will, dated the day of , he appointed *C.D.*, his executor [*or* devised his estate in trust, etc., *or* died intestate, *as the case may be*].

3. The will was proved by *C.D.*, [*or* letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immoveable *or* the proceeds of the immoveable] property of *E. F.*, and has not paid the plaintiff his debt.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of *E.F.*, deceased, and that the same may be administered under the decree of the Court.

No. 42.

ADMINISTRATION BY SPECIFIC LEGATEE.

(*Title.*)

[*Alter Form No.* 41 *thus*]—

[*Omit paragraph 1 and commence paragraph 2*] *E.F.*, late of , died on or about the day of . By his last will, dated the day of he appointed *C.D.* his executor and bequeathed to the plaintiff [*here state the specific legacy*].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of *E.F.* and, amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, etc.

No. 43.

ADMINISTRATION BY PECUNIARY LEGATEE.

(*Title.*)

[*Alter Form No.* 41 *thus*]—

[*Omit paragraph 1 and substitute for paragraph 2*] *E.F.*, late of died on or about the day of . By his last will, dated the day of he appointed *C.D.* his executor, and bequeathed to the plaintiff a legacy of rupees.

In paragraph 4 substitute " legacy " *for* " debt ".

Another form.

(*Title.*)

E.F., the above-named plaintiff, states as follows :—

1. *A.B.* of *K.* in the died on the day of By his last will, dated the day of , he appointed the defendant and *M.N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life ; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his

immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the day of . The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defndant entered into the receipt of the rents of the immoveable property and got in the moveable property ; he has sold some part of the immoveable property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

(1) to have the moveable and immoveable property of *A.B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken ;

(2) such further or other relief as the nature of the case may require.

No. 44.

EXECUTION OF TRUSTS.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. Plaintiff is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of *E.F.* and *G.H.*, the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of *E.F.* for the benefit of *C.D.*, the defendant, and the other creditors of *E.F.*].

2. *A.B.* has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. *C.D.* claims to be entitled to a beneficial interest under the instrument.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale

of *or* of part of, the said moveable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust] ; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C.D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C.D.*, and such other persons so interested as the Court may direct, or that *C.D.* may show good cause to the contrary.

[*N.B.—Where the suit is by a beneficiary, the plaint may be modelled,* mutatis mutandis, *on the plaint by a legatee.*]

No. 45.

FORECLOSURE OR SALE.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage :—

(*a*) (date) ;
(*b*) (names of mortgagor and mortgagee) ;
(*c*) (sum secured) ;
(*d*) (rate of interest) ;
(*e*) (property subject to mortgage) ;
(*f*) (amount now due) ;
(*g*) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims*).

(*If the plaintiff is mortgagee in possession, add*)

3. The plaintiff took possession of the mortgaged property on the day of and is ready to account as mortgagee in possession from that time.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The persons who, to the knowledge of the plaintiff, are interested in the mortgage-security or in the right of redemption are as follows, namely :—

7. The plaintiff claims—

(1) payment, or in default [sale *or*] foreclosure [and possession] ;

[*Where Order 34, rule 3 (4) applies.*]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46.

REDEMPTION.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage :—

(*a*) (date) ;
(*b*) (names of mortgagor and mortgagee) ;
(*c*) (sum secured) ;
(*d*) (rate of interest) ;
(*e*) (property subject to mortgage) ;
(*f*) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims*).

(*If the defendant is mortgagee in possession, add*)

3. The defendant has taken possession [*or* has received the rents] of the mortgaged property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The persons who, to the knowledge of the plaintiff, are interested in the mortgage-security or in the right of redemption are as follows, namely :—

7. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47.

SPECIFIC PERFORMANCE (No. 1).

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [*or* sell to] the plaintiff certain immoveable property therein described and referred to, for the sum of rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or* to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48.

SPECIFIC PERFORMANCE (No. 2).

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable property described in the agreement.

2. On the day of 19 , the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19 , the plaintiff again demanded such transfer. [*Or* the defendant refused to transfer the same to the plaintiff].

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[*As in paras. 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*];

(2) rupees compensation for withholding the same.

No. 49.

PARTNERSHIP.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff and *C.D.*, the defendant, have been for years [*or* months] past carrying on business together under articles of partnership in writing [*or* under a deed, *or* under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [*Or* the defendant has committed the following breaches of the partnership articles :—

(1)
(2)
(3)]

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) dissolution of the partnership ;
(2) that accounts be taken ;
(3) that a receiver be appointed.

[*N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution and instead insert a paragraph stating the facts of the partnership having been dissolved.*]

(4) WRITTEN STATEMENTS.

GENERAL DEFENCES.

The defendant denies that (*set out facts*). Denial.

The defendant does not admit that (*set out facts*).

The defendant admits that but says that

The defendant denies that he is a partner in the defendant firm of Protest.

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation. The suit is barred by article or article of the first schedule to the Limitation Act.

Jurisdiction. The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*).

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency. The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority. The defendant was a minor at the time of making the alleged contract.

Payment into court. The defendant as to the whole claim (*or* as to Rs. part of the money claimed, *or as the case may be*) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (*or* the part aforesaid).

Performance remitted. The performance of the promise alleged was remitted on the (*date*).

Re cission. The contract was rescinded by agreement between the plaintiff and defendant.

Res judicata The plaintiff's claim is barred by the decree in suit (*give the reference*).

Estoppel. The plaintiff is estopped from denying the truth of (*insert statements as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).

Ground of defence subsequent to institution of suit. Since the institution of the suit, that is to say, on the day of (*set out facts*).

No. 1.

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs.

[*or*]

4. } Except as to Rs. , same as { 1. 2. 3.
5. }
6. }

7. The defendant [*or A.B.*, the defendant's agent] satisfied the claim by payment before suit to the plaintiff [*or* to *C.D.*, the plaintiff's agent] on the day of 19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19

No. 2.

DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.

2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3.

DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.

2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4.

DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows :—

		Rs.
1942, January, 25th ...	...	... 150
,, February, 1st ...	...	... 50
	Total	... 200

2. As to the whole [*or* as to Rs. part of the money claimed] the defendant made tender before suit of Rs. and has paid the same into Court.

No. 5.

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the vehicle mentioned in the plaint was the defendant's vehicle and that it was under the charge or control of the defendant's servant. The vehicle belonged to of street, Rangoon, from whom the defendant hired the said vehicle; and the person under whose charge and control the said vehicle was, was the servant of the said

2. The defendant does not admit that the said vehicle was turned out of Dalhousie Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said vehicle approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6.

DEFENCE IN ALL SUITS FOR WRONG.

1. Denial of the several acts [*or* matters] complained of.

No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.
2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1942. May 3rd. To carriage of the goods claimed from Mandalay to Rangoon :—

45 maunds at Rs. 2 per maund ... ... Rs. 90.

No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [*assignee, etc.*].
2. The book was not registered.
3. The defendant did not infringe.

No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

No. 10.

DEFENCES IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [*or* deny his other alleged prescriptive rights].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim,* i.e., *whether by prescription, grant or what.*]

4. The plaintiff has been guilty of laches of which the following are particulars :—

1930. Plaintiff's mill began to work.

1931. Plaintiff came into possession.

1942. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated,* e.g., *limitation as to past damage.*]

No. 11.

Defence to suit for foreclosure.

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (*if more than one transfer is alleged, say which is denied*).

3. The suit is barred by article of the first schedule to the Limitation Act.

4. The following payments have been made, *viz.*:—

	Rs.
(*Insert date.*)————, ...	... 1,000
(*Insert date.*)————, ...	... 500

5. The plaintiff took possession on the of and has received the rents ever since.

6. The plaintiff released the debt on the of

7. The defendant transferred all his interest to *A.B.* by a document, dated

No. 12.

DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article of the first schedule to the Limitation Act.

2. The plaintiff transferred all interest in the property to *A.B.*

3. The defendant, by a document dated the day of transferred all his interest in the mortgage-debt and property comprised in the mortgage to *A.B.*

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(*If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits*).

No. 13.

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.

2. *A.B.* was not the agent of the defendant (*if alleged by plaintiff*).

3. The plaintiff has not performed the following conditions—(*Conditions*).

4. The defendant did not—(*alleged acts of part performance*).

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(*State why*).

6. The agreement is uncertain in the following respects—(*State them*).

7. (*or*) The plaintiff has been guilty of delay.

8. (*or*) The plaintiff has been guilty of fraud (*or* misrepresentation).

9. (*or*) The agreement is unfair.

10. (*or*) The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) (*or as the case may be*).

12. The agreement was rescinded under Conditions of Sale, No. 11 (*or by mutual agreement.*)

(*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on*, e.g., *the Limitation Act, accord and satisfaction, release, fraud, etc.*)

No. 14.

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. *A.B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs. , and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs.

2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15.

PROBATE OF WILL IN SOLEMN FORM.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Succession Act.

2. The deceased, at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [*or* of the contents of the residuary clause in the said will, *as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1931, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff;

(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1931, in solemn form of law.

No. 16.

PARTICULARS.

(O. 6, r. 5.)

(*Title of suit.*)

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursuant to the order of the of

Particulars.

(*Here set out the particulars ordered in paragraphs if necessary.*)

APPENDIX B.

PROCESS.

No. 1.

SUMMONS FOR DISPOSAL OF SUIT.

(O. 5, rr. 1, 5.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 , at o'clock in the noon, to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 2.

SUMMONS FOR SETTLEMENT OF ISSUES.

(O. 5, rr. 1, 5.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 , at o'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 3.

SUMMONS TO APPEAR IN PERSON.

(O. 5, r. 3.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person on the day of 19 , at o'clock in the noon,

to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

(O. 37, r. 2.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, for Rs. , balance of principal and interest due to him as the of a of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs together with such interest, if any, from the date of the institution of the suit as the Court may order.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 5.

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF.

(O. 1, r. 10.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS has instituted the above suit against for and whereas it appears necessary

that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved :

Take notice that you should on or before the day of 19 signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT.

(O. 22, r. 4.)

(*Title.*)

To

WHEREAS the plaintiff instituted a suit in this Court on the day of 19 against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said , deceased, and desiring that you be made the defendant in his stead :

You are hereby summoned to attend in this Court on the day of 19 at A.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 7.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

(O. 5, r. 21.)

(*Title.*)

WHEREAS it is stated that

$\frac{\text{defendant}}{\text{witness}}$ in the above suit is at present residing in : It is ordered that a summons returnable on the day of 19 be forwarded to the Court of for service on the said $\frac{\text{defendant}}{\text{witness}}$ with a duplicate of this proceeding.

The court-fee of chargeable in respect to the summons has been realized in this Court in stamps.

Dated 19

Judge.

No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER.

(O. 5, r. 24.)

(*Title.*)

To

The Superintendent of the Jail at

UNDER the provisions of Order V. rule 24. of the Code of Civil Procedure, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

No. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER.

(O. 5, rr. 27, 28.)

(*Title.*)

To

UNDER the provisions of Order V. rule 27 (*or* 28, *as the case may be*), of the Code of Civil Procedure, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

No. 10.

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

(O. 5, r. 23.)

(*Title.*)

Read proceeding from the forwarding for service on in Suit No. of 19 of that Court.

Read serving officer's endorsement stating that the
and proof of the above having been duly taken by me on the oath of
and
it is ordered that the be
returned to the with
a copy of this proceeding.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 11.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR NOTICE.

(O. 5, r. 18.)

(*Title.*)

The affidavit of , son of

I make oath / affirm :

and say as follows :—

(1) I am a process-server of this Court.

(2) On the day of 19 I received a summons / notice issued by the Court of in Suit No. of 19 in the said Court, dated the day of 19 for service on

(3) The said was at the time personally known to me, and I served the said summons / notice on him / her on the day of 19 at about o'clock in the noon at by tendering a copy thereof to him / her and requiring his / her signature to the original summons / notice

(*a*)

(*b*)

(*a*) Here state whether the person served signed or refused to sign the process, and in whose presence.

(*b*) Signature of process-server.

or,

(3) The said not being personally known to me accompanied me to and pointed out to me a person whom he stated to be the said

and I served the said summons / notice on him / her on the day of 19 , at about o'clock in the noon at by tendering a copy thereof to him / her and requiring his / her signature to the original summons / notice.

(*a*)
(*b*)

(*a*) Here state whether the person served signed or refused to sign the process, and in whose presence.
(*b*) Signature of process-server.

or,

(3) The said and the house in which he ordinarily resides being personally known to me, I went to the said house, in and there on the day of 19 at about o'clock in the noon, I did not find the said

(*a*)
(*b*)

(*a*) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.
(*b*) Signature of process-server.

or,

(3) One accompanied me to and there pointed out to me which he said was the house in which ordinarily resides. I did not find the said there.

(*a*)
(*b*)

(*a*) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.
(*b*) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn / Affirmed by the said before me this day of 19

Empowered under section 139 of the Code of Civil Procedure to administer the oath to deponents.

No. 12.

NOTICE TO DEFENDANT.

(O. 9, r. 6.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS this day was fixed for the hearing of the above suit and summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the serving officer it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons ;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same ; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 13.

SUMMONS TO WITNESS.

(O. 16, rr. 1, 5.)

(*Title.*)

To

WHEREAS your attendance is required to on behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of 19 , at o'clock in the forenoon, and to bring with you [*or* to send to this Court] .

A sum of Rs. , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. 16, r. 10.)

(*Title.*)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, issued, requiring the attendance of the witness in this Court on the day of 19 at o'clock in the forenoon and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. 16, r. 10)

(*Title.*)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, issued, requiring the attendance of the witness in this Court on the day of 19

at o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS.

(O. 16, r. 10.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS the witness cited by has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 17.

WARRANT OF ARREST OF WITNESS.

(O. 16, r. 10.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying the day

on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 18.

WARRANT OF COMMITTAL.

(O. 16, r. 16.)

(*Title.*)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (or defendant) in the above-named suit has made application to this Court that security be taken for the appearance of to give evidence (*or* to produce a document), on the day of 19 ; and whereas the Court has called upon the said to furnish such security, which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 19.

WARRANT OF COMMITTAL.

(O. 16, r. 18.)

(*Title*).

To

The Officer in charge of the Jail at

WHEREAS , whose attendance is required before this Court in the above-named case to give evidence (*or* to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (*or* defendant), the said cannot give such evidence (*or* produce such document); and whereas the Court has called upon the said to give security for his appearance on the day of 19 at which he has failed to do; This is to require

you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

APPENDIX C.

DISCOVERY, INSPECTION AND ADMISSION.

No. 1.

ORDER FOR DELIVERY OF INTERROGATORIES.

(O. 11, r. 1)

In the Court of
Civil Suit No. of 19
A.B. *Plaintiff.*
against
C.D., E.F. and G.H. *Defendants.*

Upon hearing and upon reading the affidavit of filed the day of 19 ; It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XI. rule 8. and that the costs of this application be

No. 2.

INTERROGATORIES.

(O. 11, r. 4.)

(Title as in No. 1, supra.)

Interrogatories on behalf of the above-named [*plaintiff or defendant C.D.*] for the examination of the above-named [*defendants E.F. and G.H. or plaintiff*].

1. Did not, etc.
2. Has not, etc.

etc., etc., etc.

[*The defendant E.F. is required to answer the interrogatories numbered .*]

[*The defendant G.H. is required to answer the interrogatories numbered .*]

No. 3.

ANSWER TO INTERROGATORIES.

(O. 11, r. 9.)

(*Title as in No. 1, supra.*)

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows :—

1. } Enter answers to interrogatories in paragraphs numbered
2. } consecutively.

3. I object to answer the interrogatories numbered on the ground that [*state grounds of objection.*]

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS.

(O. 11, r. 12.)

(*Title as in No. 1, supra.*)

Upon hearing

It is ordered that the do within days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be

No. 5.

AFFIDAVIT AS TO DOCUMENTS.

(O. 11, r. 13.)

(*Title as in No. 1, supra.*)

I, the above-named defendant *C.D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

(O. 11, r. 14.)

(*Title as in No. 1, supra.*)

Upon hearing and upon reading the affidavit of filed the day of 19 : It is ordered that the do, at all reasonable times, on reasonable notice, produce at , situate at , the following documents, namely, , and that the be at liberty to inspect and peruse the documents so produced, and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be

No. 7.

NOTICE TO PRODUCE DOCUMENTS.

(O. 11, r. 16.)

(*Title as in No. 1, supra.*)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [plaint *or* written statement *or* affidavit dated the day of 19 .]

[*Describe documents required.*]

X.Y., Pleader for the

To Z., Pleader for the

No. 8.

NOTICE TO INSPECT DOCUMENTS.

(O. 11, r. 17.)

(*Title as in No. 1, supra.*)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [*except the documents numbered in that notice*] at [*insert place of inspection*] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the day of 19 , on the ground that [*state the ground*] :—

No. 9.

NOTICE TO ADMIT DOCUMENTS.

(O. 12, r. 3.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent, at on between the hours of and the defendant [or plaintiff], is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been ; that such as are specified as copies are true copies ; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G.H., *pleader* [or *agent*] *for plaintiff* [or *defendant*].

To E.F., *pleader* [or *agent*] *for defendant* [or *plaintiff*].

[*Here describe the documents and specify as to each document whether it is original or a copy.*]

No. 10.

NOTICE TO ADMIT FACTS.

(O. 12, r. 5.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified ; and the defendant [or plaintiff]

is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G.H., *pleader* [or *agent*] *for plaintiff* [or *defendant*].

To E.F., *pleader* [or *agent*] *for defendant* [or *plaintiff*].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1930.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1936.
5. That Q. was never married.

No. 11.

ADMISSION OF FACTS PURSUANT TO NOTICE.

(O. 12, r. 5.)

(*Title as in No. 1, supra*).

The defendant [*or* plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit :

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or* plaintiff] on any other occasion or by any one other than the plaintiff [*or* defendant, *or* party requiring the admission].

E.F., *pleader* [or *agent*] *for defendant* [or *plaintiff*].

To G.H., *pleader* [or *agent*] *for plaintiff* [or *defendant*].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1930.	1.
2. That he died intestate ...	2.
3. That N. was his lawful son ...	3. But not that he was his only lawful son:
4. That O. died ...	4. But not that he died on the 1st April, 1936.
5. That Q. was never married ...	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM).

(O. 12, r. 8.)

(*Title as in No. 1, supra.*)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters

and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G.H., *pleader* [or *agent*] *for plaintiff* [or *defendant*].

To E.F., *pleader* [or *agent*] *for defendant* [or *plaintiff*].

APPENDIX D.

DECREES.

No 1.

DECREE IN ORIGINAL SUIT.

(O. 20, rr. 6, 7.)

(*Title.*)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered and decreed that and that the sum of Rs. be paid by the to the on account of the costs of this suit, with interest thereon at the rate of per cent. per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

Costs of Suit.

Plaintiff.				Defendant.			
	Rs	A.	P.		Rs.	A.	P.
1. Stamp for plaint ...				Stamp for power ...			
2. Do. for power ...				Do. for petition ...			
3. Do. for exhibits ...				Pleader's fee ...			
4. Pleader's fee on Rs. ...				Subsistence for witnesses ...			
5. Subsistence for witnesses				Service of process ...			
6. Commissioner's fee ...				Commissioner's fee ...			
7. Service of process ...							
Total ...				Total ...			

No. 2.

SIMPLE MONEY DECREE.

(Section 34.)

(*Title.*)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered that the do pay to the the sum of Rs. with interest thereon at the rate of per cent. per annum from to the date of realization of the said sum and do also pay Rs. , the costs of this suit, with interest thereon at the rate of per cent, per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

Costs of Suit.

Plaintiff.	Rs.	A.	P.	Defendant.	Rs.	A.	P.
1. Stamp for plaint ...				Stamp for power			
2. Do. for power ...				Do. for petition			
3. Do. for exhibits ...				Pleader's fee			
4. Pleader's fee on Rs. ...				Subsistence of witnesses ...			
5. Subsistence for witnesses				Service of process			
6. Commissioner's fee ...				Commissioner's fee			
7. Service of process ...							
Total ...				Total ...			

No. 2A.

DECREE IN A COMPROMISED SUIT WHERE PROCEEDINGS ARE STAYED UPON THE TERMS OF THE COMPROMISE.

(O. 23, r. 3.)

(*Title.*)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered that the agreement, dated , set out in the Schedule hereto, be recorded and it is decreed that all further proceedings in this suit be, and the same are, hereby stayed upon the terms of the said agreement, except for the purpose of carrying the same into effect, for which purpose the parties are to be at liberty to apply.

GIVEN under my hand and the seal of the Court this day of 19 .

Judge.

Schedule.

AGREEMENT.

Costs of Suit.

Plaintiff.	Rs.	A.	P.	Defendant.	Rs.	A.	P.
1. Stamp for plaint ...				1. Stamp for power ...			
2. Do. for power ...				2. Do. for petition ...			
3. Do. for exhibits ...				3. Pleader's fee ...			
4. Pleader's fee on Rs ...				4. Subsistence for witnesses			
5. Subsistence for witnesses				5. Service of process ...			
6. Commissioner's fee ...				6. Commissioner's fee ...			
7. Service of process ...							
Total ...				Total ...			

No. 3.

PRELIMINARY DECREE FOR FORECLOSURE.

(O. 34, r. 2.)

(*Title.*)

THIS suit coming on this day of

It is declared that the amount due by the defendant No (s). to the plaintiff is the sum of Rs. being the balance of account as shown in the Schedule hereto ; and it is further ordered that the plaintiff shall be entitled to apply for and obtain a final decree for foreclosure of the mortgage in suit ; provided that the defendant, or * may apply for and obtain a decree for redemption of the mortgage on payment into Court of the amount so declared to be due on or before the day of and on compliance with all further orders of the Court and on payment of such further sums as the Court may determine to be payable on finally adjusting the account up to the date of payment.

*(Any other party to the suit who has a right to redeem the plaintiff's mortgage.)

† And it is further ordered and decreed that defendant No (s). shall be personally liable for the plaintiff's costs to the extent of

†To be struck out unless the Judge thinks that the conduct of some of the defendants is such as to render them liable to pay costs personally.

Schedule.

(1) Due to the plaintiff for redemption ...		...	Rs.
(2) Due to the plaintiff for costs of suit ...		...	Rs.
(3) Due to the plaintiff for costs, etc., in respect of the mortgage ...	Rs.		
Less costs, etc., in respect of the mortgage due to the defendant No. ...	Rs.		
			Rs.
			Rs.
Less costs of suit due to the defendant No.		...	Rs.
Due to the plaintiff		...	Rs.

Any amount that is ordered to be paid in this way is to be omitted from the Schedule.

With interest at per cent. on the sum of Rs. from the date of this decree.

No. 4.

FINAL DECREE FOR FORECLOLURE.

(O. 34. r. 2.)

(*Title.*)

Upon reading the preliminary decree passed in this suit on the day of and further orders dated the and the application of the plaintiff dated the day of for a final decree, and after hearing the parties, and on it appearing that payment of the sum found due

by the preliminary decree and compliance with the further orders of the Court has not been made, within the time specified, by any party entitling him to apply for a decree for redemption ;

It is hereby ordered and decreed that the defendants Nos. and all persons claiming through or under them or any of them are hereby absolutely debarred from all right of redemption of the property described in the Schedule hereto, and that the defendants Nos. are freed from all liabilities in respect of the mortgage mentioned in the Schedule hereto and on account of this suit ;

And it is ordered that the defendant No. shall deliver to the plaintiff possession of the said property.

Schedule.

THE MORTGAGED PROPERTY.

THE MORTGAGE.

No. 5.

PRELIMINARY DECREE FOR SALE.

(O. 34, r. 3.)

(*Title.*)

THIS suit coming on this day of

It is declared that the amount due to the plaintiff by the defendant No(s). is the sum of Rs. being the balance of account as shown in the Schedule A hereto ; and it is further declared that the plaintiff shall be entitled to apply for and obtain a final decree for sale of the property shown in the Schedule B hereto :

Provided that any of the defendants No(s). may apply for and obtain a decree for redemption of the mortgage on payment into Court of the amount so declared to be due on or before the day of and on compliance with all further orders of the Court and on payment of such further sums as the Court may determine to be payable on finally adjusting the account up to the date of payment.

It is further declared that the amount due to the parties to the suit whose claims have been proved, and the priorities of such parties to payment out of the sale proceeds, are as shown in Schedule C hereto.

*And it is further ordered and decreed that defendants No(s). shall be personally liable for the plaintiff's costs to the extent of

*To be struck out unless the Judge thinks that the conduct of some of the defendants is such as to render them liable to pay costs personally. Any amount that is ordered to be paid in this way is to be omitted from Schedule A.

Schedule A.

(1) Due to the plaintiff for principal and interest on the mortgage ... ... Rs.
(2) Due to the plaintiff for costs of suit ... Rs.
(3) Due to the plaintiff for costs, etc., in respect of the mortgage ... Rs.
Less costs, etc., due to the defendant No. ... ... Rs.

Rs.

Rs.

Less costs of suit due to the defendant No. Rs.

Due to the plaintiff from defendant No. ... Rs.

With interest at per cent. on the sum of Rs. from the date of this decree.

Schedule B.

THE PROPERTY.

Schedule C.

Order of priority.	*Party.*	*Amount due.*
(1)	...	...
(2)	...	...
(3)	...	...

No. 6.

FINAL DECREE FOR SALE.

(O. 34, r. 3.)

(*Title.*)

Upon reading the preliminary decree passed in this suit on the day of and further orders dated the and the application of the plaintiff dated the day of for a final decree, and after hearing the parties, and on it appearing that payment of the sum found due by the preliminary decree and compliance with the further orders of the Court has not been made, within the time specified, by any party entitling him to apply for a decree for redemption ;

It is hereby ordered and decreed that the mortgaged property mentioned in the Schedule A hereto (*a*) be sold, and that for the purposes of such sale the parties shall produce before the Court or such officer as it appoints all documents of title in their possession or power relating to the said property ;

(a) (Or a specified part).

And it is further ordered and decreed that the proceeds of the sale (after deduction therefrom of the expenses of the sale) shall, subject to any orders as to setting off the amount due against the purchase money, be paid into Court and applied in payment of the amounts found due to the parties under the preliminary decree and further orders of the Court in the order of priority as shown in the Schedule B hereto.

If is further declared that the mortgages in respect of which the amounts are shown as due in Schedule B, and the right to redeem the same, shall be extinguished, except as to the right of any party entitled thereto to obtain a personal decree against the mortgagor for any balance unpaid.

Schedule A.

THE PROPERTY.

Schedule B.

Order of priority.	*Party.*	*Amount due.*
(1)	...	...
(2)	...	...
(3)	...	...

No. 7.

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF THE MORTGAGED PROPERTY.

(O. 34, r. 3.)

(*Title.*)

Upon reading the application of the and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid decree amounted to Rs. and have been paid to the parties, leaving balance(s) due as shown in the Schedule hereto; and that the balances due to and are legally recoverable from the (*a*) personally;

It is hereby ordered and decreed that the (*a*) do pay to the (*b*) the sum of Rs. with further interest at the rate of six per cent. per annum from the (*c*) day of up to the date of realization of the said sum, and the costs of this application.

(*a*) Mortgagor.
(*b*) Mortgagee.
(*c*) (Being the date of payment of the proceeds of sale as aforesaid).

Schedule.

Party.	Amount due.	Balance unpaid.
1. 2. 3.		

No. 8.

PRELIMINARY DECREE FOR REDEMPTION.

(O. 34, r. 4.)

(*Title.*)

This suit coming on this day of

It is hereby declared that the amount due to the defendant No(s). by the plaintiff is the sum of Rs. being the balance of account as shown in the Schedule hereto; and it is further declared that, on payment into Court of the said amount on or before the day of and on compliance with all further orders of the Court and on payment of such further sums as the Court may determine to be payable on finally adjusting the account up to the date of payment, the plaintiff shall be entitled to apply for and obtain a final decree for redemption: and that if the plaintiff fails to make full payment as aforesaid, the defendant No(s). shall be entitled to apply for and obtain a decree*

* For sale or foreclosure.

†And it is further ordered and decreed that defendant No(s). shall be personally liable for the plaintiff's costs to the extent of

†To be struck out unless the Judge thinks that the conduct of some of the defendants is such as to render them liable to pay costs personally.

Schedule.

(1) Due to the defendant No.	on the mortgage		Rs.
(2) Due to the defendant No.	for costs of suit		Rs.
(3) Due to the defendant No.	for costs, etc., in respect of the mortgage ...	Rs.	
Less costs, etc., in respect of the mortgage due to the plaintiff ...	...	Rs.	
			Rs.
			Rs.
Less costs of suit due to the plaintiff		...	Rs.
Due to the defendant No.		...	Rs.

Any amount that is ordered to be paid in this way is to be omitted from the Schedule.

With interest at per cent. on the sum of Rs. from the date of this decree.

No. 9.

FINAL DECREE FOR REDEMPTION.

(O. 34, r. 4.)

(*Title.*)

Upon reading the preliminary decree passed in this suit on the day of and further orders dated the and the application of the plaintiff dated the day of for a final decree, and after hearing the parties, and on it appearing that payment

of the sum found due by the preliminary decree and subsequent orders has been made and all further orders of the Court have been complied with by the plaintiff:

It is hereby ordered and decreed that the defendant No. shall deliver to the plaintiff or to such person as the plaintiff appoints in this behalf the mortgaged property specified in the Schedule hereto and all documents in the possession or power of the defendant No. relating to the said property, and shall execute and have registered (as required by the plaintiff and at the cost of the plaintiff) either (i) an acknowledgment in writing that all rights created by the mortgage in suit have been extinguished, or (ii) a re-transfer to the plaintiff or to such third person as he may direct of the said property freed from the mortgage and from all encumbrances created by the defendant or by any person deriving title from him (*a*), or (iii) a transfer of the mortgage to such third person as the plaintiff may direct.

(*a*) or (where the defendant claims by derived title) by those under whom he claims.

Schedule.

THE PROPERTY.

NOTE.—This form is applicable, with substitution of the proper party for "the plaintiff," where the decree is in favour of a party other than the plaintiff.

No. 10.

DECREE FOR RECTIFICATION OF INSTRUMENT.

(*Title.*)

IT is hereby declared that the , dated the day of 19 , does not truly express the intention of the parties to such

And it is decreed that the said be rectified by

No. 11.

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(*Title.*)

IT is hereby declared that the dated the day of 19 , and made between and is void as against the plaintiff and all other the creditors, if any, of the defendant

No. 12.

INJUNCTION AGAINST PRIVATE NUISANCE.

(*Title.*)

LET the defendant , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to

occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 13.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

(*Title.*)

LET the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 14.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

(*Title.*)

LET the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at , the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 15.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

(*Title.*)

IT is ordered that the following accounts and inquiries be taken and made, that is to say:—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suit by legatees—

2. That an account be taken of the legacies given by the testators's will.

In suits by next-of-kin—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the * shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (*or* proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the * (and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquires be made, and accounts taken, that is to say—

(*a*) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;

(*b*) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof ;

(*c*) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

---

* Here insert name of proper officer.

12. And it is ordered that G.H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the * and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the * shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the * to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the * do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

15. And, lastly, it is ordered that this suit [*or* proceeding] stand adjourned for making a final decree to the day of .

[Such part only of this decree is to be used as is applicable to the particular case.]

No. 16.

Final Decree in an Administration-suit by a Legatee.

(Title.)

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of amounting together to the sum of Rs.

2. Let the * of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(*a*) The costs of the plaintiff to Mr. , his advocate [*or* pleader] and the costs of the defendant to Mr. , his advocate [*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

* Here insert name of proper officer.

costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate of the *, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 17.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(*Title.*)

1. IT is declared that defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff.

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the *, pay to the plaintiff the amount of what the * shall certify to be due for principal and interest.

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

No 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(*Title.*)

1. LET the *of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E.F.*, the intestate, within one week after the taxation of the said costs by the said *, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And 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 the defendant as follows:—

(*a*) Let the defendant, within one week after the taxation of the said costs by the *as aforesaid, pay one-third share

* Here insert name of proper officer.

of the said residue to the plaintiffs *A.B.*, and *C.D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E.F.*, the intestate.

(*b*) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said *E.F.*, the intestate.

(*c*) And let the defendant, within one week after the taxation of the said costs by the * as afore said, 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. 19.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(*Title.*)

IT is declared that the proportionate shares of the parties in the partnership are as follows :—

It is declared that this partnership shall stand dissolved [*or* shall be deemed to have been dissolved] as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1 An account of the credits, property and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the * may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of and that the * do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

* Here insert name of proper officer.

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of 19

No. 20.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(*Title.*)

IT is ordered that the fund now in Court, amounting to the sum of Rs. be applied as follows :—

1. In payment of the debts due by the partnership set forth in the certificate of the *amounting in the whole to Rs. .

2. In payment of the costs of all parties in this suit, amounting to Rs.

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership assets.

[*Or*, And that the remainder of the said sum of Rs. be paid to the said plaintiff (*or* defendant) in part payment of the sum of Rs. certified to be due to him in respect of the partnership accounts.]

4. And that the defendant [*or* plaintiff] do on or before the day of pay to the plaintiff [*or* defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 21.

DECREE FOR RECOVERY OF LAND AND MESNE PROFITS.

(*Title.*)

IT is hereby decreed as follows :—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

* Here insert name of proper officer.

Or

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

Schedule.

APPENDIX E.

EXECUTION.

No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED.

(O. 21, r. 2.)

(*Title.*)

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of Rs. recoverable under the decree has been $\frac{\text{paid}}{\text{adjusted}}$ and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why the $\frac{\text{payment}}{\text{adjustment}}$ aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 2.

PRECEPT.

(Section 46.)

(*Title.*)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of at under section 46 of the Code of Civil Procedure, with directions to attach the property

specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule.

Dated the day of 19

Judge.

No. 3.

ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT.

(O. 21, r. 6.)

(*Title.*)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, it is

Ordered:

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19 .

Judge.

No. 4.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

(O. 21, r. 6.)

(*Title.*)

CERTIFIED that no (*a*) satisfaction of the decree of this Court in Suit No. of 19 , a copy of which is hereunto attached has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19 .

Judge.

(*a*) *If partial, strike out "no" and state to what extent.*

No. 5.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT.

(O. 21, r. 6.)

(*Title.*)

Number of suit and the Court by which the decree was passed. (1)	Names of parties. (2)	Date of application for execution. (3)	Number of the execution case. (4)	Processes issued and dates of service thereof. (5)	Costs of execution. (6) Rs A. P	Amount realized. (7) Rs A. P	How the case is disposed of. (8)	Remarks. (9)

Signature of Clerk in charge. *Signature of Judge.*

No. 6.

APPLICATION FOR EXECUTION OF DECREE.

(O. 21, r. 11.)

In the Court of

I , decree-holder, hereby apply for execution of the decree herein below set forth :—

No. of suit. (1)	Names of parties. (2)	Date of decree. (3)	Whether any appeal preferred from decree. (4)	Payment or adjustment made, if any. (5)	Previous application, if any, with date and result. (6)	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree. (7)	Amount of costs, if any, awarded. (8)	Against whom to be executed. (9)	Mode in which the assistance of the Court is required. (10)
789 of 1940.	A.B.—Plaintiff C.D.—Defendant	October 11, 1940.	No.	None.	Rs. 72-4 recorded on application, dated the 4th March, 1941.	Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment].	Rs. a. p. As awarded in the decree ... ... 47 10 4 Subsequently incurred ... ... 8 2 0 Total ... 55 12 4	Against the defendant C.D.	[*When attachment and sale of moveable property is sought.*] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out the execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me. [*When attachment and sale of immoveable property is sought.*] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me.

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed , *decree-holder.*

Dated the day of 19

[*When attachment and sale of immoveable property is sought.*]

Description and Specification of Property.

The undivided one-third share of the judgment-debtor in a house situated in the village of , value Rs. 40, and bounded as follows:—

East by G's house; west by H's house; south by public road, north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed , *decree-holder.*

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

(O. 21, r. 16.)

(*Title.*)

To

WHEREAS has made application to this Court for execution of decree in Suit No. of 19 , on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

(O. 21, r. 30.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid; These are to command you to attach the moveable

Decree			
Principal			
Interest			
Costs			
Costs of execution			
Further interest			
Total ...			

property of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said , and unless the said shall pay to you the said sum of Rs. together with Rs. , the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and the manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court this day of 19 .

Schedule.

Judge.

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED BY DECREE.

(O. 21, r. 31.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to deliver to the plaintiff the moveable property (*or* a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (*or* share) has not been delivered.

These are to command you to seize the said moveable property (*or* a share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

Judge.

No. 10.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT.

(O. 21, r. 34.)

(*Title.*)

To

TAKE notice that on the day of 19 , the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a

draft is hereunto annexed, of the immoveable property specified hereunder, and that the day of 19 , is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of Property.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 11.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC.

(O. 21, r. 35.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of has been decreed to , the plaintiff in this suit: You are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

Judge.

No. 12.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE.

(O. 21, r. 37.)

(*Title.*)

To

WHEREAS has made application to this Court for execution of decree in suit No. of 19 , by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19 , to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 13.

WARRANT OF ARREST IN EXECUTION.

(O. 21, r. 38.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS was adjudged by a decree of the Court in Suit No. of 19 , dated the day of 19 , to pay to the decree-holder the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said decree-holder in satisfaction of the said decree; These are to command you to arrest the said judgment-debtor and, unless the said judgment-debtor shall pay to you the said sum of Rs. together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

Decree			
Principal			
Interest			
Costs			
Execution			
Total ...			

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL.

(O. 21, r. 40.)

(*Title.*)

To

The Officer in charge of the Jail at

WHEREAS who has been brought before this Court this day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court on the day of 19 , and

by which decree it was ordered that the said should pay ; And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody ; You are hereby, [in the name of the King,][1] commanded and required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, and the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE.

(Sections 58, 59.)

(*Title.*)

To

The Officer in charge of the Jail at

UNDER orders passed this day, you are hereby directed to set free judgment-debtor now in your custody.

Dated

Judge.

No. 15A.

FORM OF REPORT FOR MONEY DEPOSITED IN CONNECTION WITH THE ATTACHMENT OF PROPERTY TOGETHER WITH NOTICE TO DECREE-HOLDER.

IN THE COURT OF

Execution Case No. of 19 .

[1] The words in brackets should have been omitted.

versus

Received the sum of Rs. on account of the following expenditure to be incurred in connection with attachment of property as per list appended:—

		Rs.	a.	p.
Process Fees * Rule 15 (i)(*b*)(ii)(2)— † 17 (i)(*c*)(ii)(2).	1. Custody fees ... 2. Feeding charges ... 3. Conveyance charges ... 4. Other expenses (to be specified).			
	Total ...			

* Strike out if used in Courts other than the High Court and the Rangoon City Civil Court.
† Strike out if used in the High Court and the Rangoon City Civil Court.

N.B.—The Decree-holder is hereby warned that the sum deposited by him for recurring charges will be exhausted on the day of 19 . and that unless a further deposit is made before that date the attachment will cease.

Dated this day of 19 .

Bailiff.

List of Property to be attached.

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

(O. 21, r. 46.)

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 19 . in Suit No. of 19 . in favour of for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, to which the defendant

is entitled, subject to any claim of the said and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 17.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

(O. 21, r. 46.)

(*Title.*)

To

WHEREAS has failed to satisfy a decree passed against on the day of 19 , in Suit No. of 19 , in favour of for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 18.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION.

(O. 21, r. 46.)

(*Title.*)

To

Defendant and to Secretary of Corporation.

WHEREAS has failed to satisfy a decree passed against on the day of 19 , in Suit No. of 19 , in favour of , for Rs. ; It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained,

until the further order of this Court, from making any transfer of shares in the aforesaid Corporation, namely, , or from receiving payment of any dividends thereon, and you, , the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY ADMINISTRATION OR LOCAL AUTHORITY.

(O. 21, r. 48.)

(*Title.*)

To

WHEREAS judgment-debtor in the above-named case, is a (*describe office of judgment-debtor*) receiving his salary (*or* allowances) at your hands; and whereas decree-holder in the said case, has applied in this Court for the attachment of the salary (*or* allowances) of the said to the extent of due to him under the decree: You are hereby required to withhold the said sum of from the salary of the said in monthly instalments of and to remit the said sum (*or* monthly instalments) to this Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT.

(O. 21, r. 51.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the day of 19 , for the attachment of You are hereby directed to seize the said and bring the same into Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 21.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

(O. 21, r. 52.)

(*Title*).

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI 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, etc.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,
SIR,
Your most obedient servant,
Judge.

Dated the day of 19 .

No. 22.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT.

(O. 21, r. 53.)

(*Title.*)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your Court on the day of 19 , by in Suit No. of 19 , in which he was and was has been attached by this Court on the application of , the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,
Judge.

Dated the day of 19 .

No. 23.

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE.

(O. 21, r. 53.)

(*Title.*)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of 19 , in the Court of in Suit No. of 19 , in which was and was ; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 24.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

(O. 21, r. 54.)

(*Title.*)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 19 , in Suit No. of 19 , in favour of for Rs. ; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

Judge.

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY.

(O. 21, r. 56.)

(*Title.*)

To

WHEREAS the following property has been attached in execution of a decree in Suit No. of 19 , passed on the day of 19 , in favour of for Rs. ; It is ordered that the property so attached, consisting of Rs. in money and Rs. in currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you, the said to

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 26.

NOTICE TO ATTACHING CREDITOR.

(O. 21, r. 58.)

(*Title.*)

To

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Suit No. of 19 , this is to give you notice to appear before this Court on , the day of 19 , either in person or by a pleader of the Court duly instructed to support your claim as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

(O. 21, r. 66.)

(*Title.*)

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving days' previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached

under a warrant from this Court, dated the day of 19 , in execution of a decree in favour of in Suit No. of 19 , or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 28.

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION.

(O. 21, r. 66.)

(*Title.*)

To

Judgment-debtor.

WHEREAS in the above-named suit , the decree-holder has applied for the sale of

You are hereby informed that the day of 19 , has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 29.

PROCLAMATION OF SALE.

(O. 21, r. 66.)

(*Title.*)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of

(1) Suit No.....of 19 , decided by the ....of.....in which .....was plaintiff and .....was defendant.

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at o'clock on the at In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors abovementioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further

Conditions of Sale.

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to refuse acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immoveable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale,

may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

Schedule of Property.

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Details of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value.

No. 30.

ORDER ON THE BAILIFF FOR CAUSING SERVICE OF PROCLAMATION OF SALE.

(O. 21, r.66.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 . has been fixed for the sale of the said property. copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of 19

Schedule. *Judge.*

No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT.

(O. 21, r. 71.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of , purchaser, there was a deficiency in the price of the said property amounting to Rs. , and that the expenses attending such re-sale amounted to Rs. , making a total of Rs. , which sum is recoverable from the defaulter.

Dated the day of 19 .

Officer holding the sale.

No. 32.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION.

(O. 21, r. 79.)

(Title.)

To

WHEREAS has become the purchaser at a public sale 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 person except the said

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

(O. 21, r. 79.)

(Title.)

To

and to

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of being debts due from you to you ; It is ordered that you

be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said .

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 34.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

(O. 21, r. 79.)

(*Title.*)

To and

Secretary of

Corporation.

WHEREAS has become the purchaser, at a public sale in execution of the decree in the above suit, of certain shares in the above Corporation, that is to say, of standing in the name of you ; It is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said the purchaser aforesaid, or from receiving any dividends thereon ; and you , Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 35.

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE OR SELL PROPERTY.

(O. 21, r. 83.)

(*Title.*)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 , for the sale of the under-mentioned property of the judgment-debtor , and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable

him to raise the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof :

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate : provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

Description of property.

No. 36.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.

(O. 21, rr. 90, 92.)

(*Title.*)

To

WHEREAS the under-mentioned property was sold on the day of 19 , in execution of the decree passed in the above-named suit, and whereas , the decree-holder [*or* judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [*or* fraud] in publishing [*or* conducting] the sale, namely, that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

Description of property.

No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.

(O. 21, rr. 90, 92.)

(*Title.*)

To

WHEREAS , the purchaser of the under-mentioned property sold on the day of 19 , in execution of the decree passed in the above-named suit, has applied to

this Court to set aside the sale of the said property on the ground that , the judgment-debtor, had no saleable interest therein :

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

Description of property.

No. 38.

CERTIFICATE OF SALE OF LAND.

(O. 21, r. 94.)

(*Title.*)

THIS is to certify that has been declared the purchaser at a sale by public auction on the day of 19 , of in execution of decree in this suit, and that the said sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

(O. 21, r. 95.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS has become the certified purchaser of at a sale in execution of decree in suit No. of 19 ; You are hereby ordered to put the said , the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE

(O. 21, r. 97.)

(*Title.*)

To

WHEREAS , the decree-holder in the above suit, has complained to this Court that you have resisted (*or* obstructed) the officer charged with the execution of the warrant for possession :

You are hereby summoned to appear in this Court on the day of 19 , at A.M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 41.

WARRANT OF COMMITTAL.

(O. 21, r. 98.)

(*Title.*)

To

The Officer in Charge of the Jail at

WHEREAS the under-mentioned property has been decreed to , the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [*or* obstructed] and is still resisting [*or* obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison ;

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

(Section 72.)

(*Title.*)

To

, Collector of

SIR,

In answer to your communication No. , dated , representing that the sale in execution of the decree

in this suit of land situate within your district is objectionable. I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,

Your obedient Servant,

Judge.

APPENDIX F.

SUPPLEMENTAL PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT.

(O. 38, r. 1.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS , the plaintiff in the above suit claims the sum of Rs. as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to ;

	Rs.	as.
Principal		
Interest		
Costs		
Total ...		

These are to command you to demand and receive from the said the sum of Rs. as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. is forthwith delivered to you by or on behalf of the said , to take the said into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs. for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT.

(O. 38, r. 2.)

(*Title.*)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant, has been arrested and brought before the Court ;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security :

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit ; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19 .

(*Signed*).

Witnesses.

1.
2.

No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE.

(O. 38, r. 3.)

(*Title.*)

To

WHEREAS , who became surety on the day of 19 for your appearance in the above suit, has applied to this Court to be discharged from his obligation.

You are hereby summoned to appear in this Court in person on the day of 19 , at A.M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 4.

ORDER FOR COMMITTAL.

(O. 38, r. 4.)

(*Title.*)

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of , the defendant, to answer any judgment that may be passed against him in the suit, and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do ; it is ordered that the said defendant be committed to the civil prison until the decision of the suit ; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

(O. 38, r. 5.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit

These are to command you to call upon the said defendant on or before the day of 19 either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him ; or to appear and show cause why he should not furnish security ; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court ; and you are further commanded to return this warrant on or before the day of 19 . with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY.

(O. 38, r. 5.)

(*Title.*)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs. to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed ;

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree ; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs. or such sum not exceeding the said sum as the said Court may adjudge.

Schedule.

Witness my hand at this day of 19 .

(*Signed.*)

Witnesses.

1.
2.

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

(O. 38, r. 6.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do ; These are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of the Court : and you are further commanded to return this warrant on or before the

day of 19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 8.

TEMPORARY INJUNCTIONS.

(O. 39, r. 1.)

(*Title.*)

Upon motion made unto this Court by , pleader of [*or* advocate for] the plaintiff *A.B.*, and upon reading the petition of the said plaintiff in this matter filed [this day] [*or* the plaint filed in this suit on the day of , *or* the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof [*if after notice and defendant not appearing : add*, and also the evidence of as to service of notice of this motion upon the defendant *C.D.*] : This Court doth order that an injunction be awarded to restrain the defendant *C.D.*, his servants, agents and workmen, from pulling down or suffering to be pulled down the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. in the of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this day of

Judge.

[***Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus*** :—]

to restrain the defendants and from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or* bill of exchange] in question, dated on or about the , etc., mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion, until the hearing of this suit, or until the further order of this Court.

[*In Copyright cases*] to restrain the defendant *C.D.*, his servants, agents or workmen, from printing, publishing or vending a book, called ; or any part thereof, until the, etc.

[*Where part only of a book is to be restrained*] to restrain the defendant *C.D.*, his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or* petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [*or* which is contained in page to page both inclusive], until , etc.

[*In Patent cases*] to restrain the defendant *C.D.*, his agents, servants and workmen, from making or vending any perforated bricks [*or as the case may be*] upon the principle of the inventions in the plaintiff's plaint [*or* petition, etc., *or* written statement, etc.,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[*In cases of Trade marks*] to restrain the defendant *C.D.*, his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff *A.B.* in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, etc.,] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff *A.B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff *A.B.*, until the, etc.

[*To restrain a partner from in any way interfering in the business*] to restrain the defendant *C.D.*, his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership firm of *B.* and *D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B.* and *D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking, until the, etc.

No. 9.

APPOINTMENT OF A RECEIVER.

(O. 40, r. 1.)

(*Title.*)

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 19 , in favour of ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 10.

BOND TO BE GIVEN BY RECEIVER.

(O. 40, r. 3.)

(*Title.*)

KNOW all men by these presents, that we, and , are jointly and severally bound to of the Court of in Rs. to be paid to the said or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19 .

Whereas a plaint has been filed in this Court by against for the purpose of [*here insert the object of suit*]:

And whereas the said has been appointed, by order of the abovementioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the said plaint named ;

Now the condition of this obligation is such, that if the above-bounden shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the

immoveable property, and in respect of the moveable property, of the said at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court has directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of

NOTE.—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

APPENDIX G.

APPEAL, REFERENCE AND REVIEW.

MEMORANDUM OF APPEAL.

No. 1.

(O. 41, r. 1.)

(*Title.*)

The above-named appeals to the Court at from the decree of in Suit No. of 19 , dated the day of 19 , and sets forth the following grounds of objection to the decree appealed from, namely :—

No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF DECREE.

(O. 41, r. 5.)

(*Title.*)

To

THIS security bond on stay of execution of decree executed by witnesseth :—

That , the plaintiff in Suit No. of 19 , having sued , the defendant, in this Court and a decree having been passed on the day of 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be confirmed or varied by the appellate Court the said defendant shall duly act in

accordance with the decree of the appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19 .

Schedule.

Witnessed by

(*Signed.*)

1.
2.

No. 3.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL.

(O. 41, r. 6.)

(*Title.*)

To

THIS security bond on stay of execution of decree executed by witnesseth :—

That , the plaintiff in Suit No. of 19 , having sued , the defendant, in this Court and a decree having been passed on the day of 19 in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. , mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal repesentatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19 .

Schedule.

Witnessed by

(*Signed.*)

1.
2.

No. 4.

SECURITY FOR COSTS OF APPEAL.

(O. 41, r. 10.)

(*Title.*)

To

THIS security bond for costs of appeal executed by witnesseth :—

The appellant has preferred an appeal from the decree in Suit No. of 19 , against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19 .

Schedule.

Witnessed by (*Signed.*)

1.
2.

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL.

(O. 41, r. 13.)

(*Title.*)

To

You are hereby directed to take notice that , the in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the day of 19 .

You are requested to send with all practicable despatch all material papers in the suit.

Dated the day of 19 .

Judge.

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

(O. 41, r. 14.)

(*Title.*)

APPEAL from the of the Court of dated the day of 19 .

To

Respondent.

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 19 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by someone by law authorized to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

[NOTE.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT.

(O. 41, r. 20.)

(*Title.*)

To

WHEREAS you were a party in suit No. of 19 , in the Court of , and whereas the has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal :

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the day of 19 , at A.M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 8.

MEMORANDUM OF CROSS OBJECTION.

(O. 41, r. 22.)

(*Title.*)

WHEREAS the has preferred an appeal to the Court at from the decree of in Suit No. of 19 , dated the day of 19 , and whereas notice of the day fixed for hearing the appeal was served on the on the day of 19 , the files this memorandum of cross objection under rule 22 of Order XLI of the Code of Civil Procedure, and sets forth the following grounds of objection to the decree appealed from, namely :—

No. 9.

DECREE IN APPEAL.

(O. 41, r. 35.)

(*Title.*)

Appeal No. of 19 from the decree of the Court of dated the day of 19 .

Memorandum of Appeal.

Plaintiff.

Defendant.

The above-named appeals to the Court at from the decree of in the above suit, dated the day of 19 . for the following reasons, namely :—

This appeal coming on for hearing on the day of 19 , before , in the presence of for the appellant and of for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs. , are to be paid by The costs of the original suit are to be paid by

GIVEN under my hand this day of 19 .

Judge.

Costs of Appeal.

Appellant.	Amount.			Respondent	Amount.		
	Rs.	A.	P.		Rs	A.	P.
1. Stamp for memorandum of appeal.				Stamp for power ...			
2. Do for power ...				Do. for petition ...			
3. Service of processes ...				Service of processes ...			
4. Pleader's fee on Rs. ...				Pleader's fee on Rs. ...			
Total ...				Total ...			

No. 10.

APPLICATION TO APPEAL *in formâ pauperis.*

(O. 44, r. 1.)

(*Title.*)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the day of 19 .

(*Signed.*)

[NOTE.—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.]

No. 11.

NOTICE OF APPEAL *in formâ pauperis.*

(O. 44, r. 1.)

(*Title.*)

WHEREAS the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19 and whereas the day of 19 has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 12.*

NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF APPEAL TO THE SUPREME COURT SHOULD NOT BE GRANTED.

(O. 45, r. 3.)

(*Title.*)

To

TAKE notice that
has applied to this Court for a certificate that as regards amount or value and nature the above case fulfils the requirements of section 110 of the Code of Civil Procedure, or that it is otherwise a fit one for appeal to the Supreme Court.

The day of 19 is fixed for you to show cause why the Court should not grant the certificate asked for.

GIVEN under my hand and the seal of the Court, this day of 19 .

Registrar.

No. 13.*

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE SUPREME COURT.

(O. 45, r. 8.)

(*Title.*)

To

WHEREAS . the in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure:

Take notice that the appeal of the said to the Supreme Court has been admitted on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

Registrar.

* Forms Nos. 12 and 13 should have been omitted in view of the omission of Order XLV by the Union of Burma (Adaptation of Laws) Order, 1948.

No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

(O. 47, r. 4.)

(*Title.*)

To

TAKE notice that has applied to this Court for a review of its decree passed on the day of 19 in the above case. The day of 19 is fixed for you to show cause why the Court should not grant a review of its decree in this case.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

APPENDIX H.

MISCELLANEOUS.

No. 1.

AGREEMENT OF PARTIES AS TO ISSUE TO BE TRIED.

(O. 14, r. 6.)

(*Title.*)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or* of law] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of 19 and filed as Exhibit in the said suit, is or is not beyond the statute of limitation (*or state the point at issue whatever it may be*):

We therefore severally bind ourselves that, upon the finding of the Court in the negative [*or* affirmative] of such issue, will pay to the said the sum of Rupees (*or* such sum as the Court shall hold to be due thereon), and I, the said , will accept the said sum of Rupees (*or* such sum as the Court shall hold to be due) in full satisfaction of my claim on the bond aforesaid [*or* that upon such finding I, the said will do or abstain from doing, etc., etc.]

Plaintiff.

Defendant.

Witnesses :—

1.

2.

Dated the day of 19 .

No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL.

(Section 24.)

In the District Court of
No. of 19 .

To

WHEREAS an application, dated the day of 19 , has been made to this Court by the in Suit No. of 19 now pending in the Court of the at , in which is plaintiff and is defendant, for the transfer of the suit for trial to the Court of the at ; you are hereby informed that the day of 19 has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 3.

NOTICE OF PAYMENT INTO COURT.

(O. 24, r. 2.)

(*Title.*)

TAKE notice that the defendant has paid into Court Rs. and says that that sum is sufficient to satisfy the plaintiff's claim in full.

X.Y., *Pleader for the defendant.*

To Z., *Pleader for the plaintiff.*

No. 4.

NOTICE TO SHOW CAUSE (GENERAL FORM.)

(*Title.*)

To

WHEREAS the above-named has made application to this Court that

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the day of 19 , at o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 5.

LIST OF DOCUMENTS PRODUCED BY $\frac{\text{PLAINTIFF}}{\text{DEFENDANT}}$

(O. 13, r. 1.)

(*Title.*)

No. (1)	Description of document. (2)	Date, if any, which the document bears. (3)	Signature of party or pleader. (4)

No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION.

(O. 18, r. 16.)

(*Title.*)

To

plaintiff (*or defendant*).

WHEREAS in the above suit application has been made to the Court by that the examination of , a witness required by the said , in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or any other good and sufficient cause to be stated*):

TAKE notice that the examination of the said witness will be taken by the Court on the day of 19 .

Dated the day of 19 .

Judge.

No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS.

(O. 26, rr. 4, 18.)

(*Title.*)

To

WHEREAS the evidence of is required by the in the above suit; and whereas you are requested to take the evidence on interrogatories [*or vivâ voce*] of such witness , and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 8.

LETTER OF REQUEST.

(O. 26, r. 5.)

(*Title.*)

(Heading:—To the President and Judges of, etc., etc., *or as the case may be.*)

WHEREAS a suit is now pending in the in which *A.B.* is plaintiff and *C.D.* is defendant; And in the said suit the plaintiff claims

(*Abstract of claim.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E.F., of
G.H., of and
I.J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I , as the of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said , or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or vivâ voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

(O. 26, rr. 9, 11.)

(*Title.*)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission for should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 10.

COMMISSION TO MAKE A PARTITION.

(O. 26, r. 13.)

(*Title.*)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the day of 19 ; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 11.

NOTICE TO MINOR DEFENDANT AND GUARDIAN.

(O. 32, r. 3.)

(*Title.*)

To

Minor Defendant.
Natural Guardian.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you [1] , are hereby required to take notice that unless within days from the service upon you of this notice, an application is made to this Court for the appointment of you [1] or of some friend of you, the minor, to act as a guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

[1] Here insert the name of guardian.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM.

(O. 33, r. 4.)

(*Title.*)

To

WHEREAS has applied to this Court for permission to institute a suit against *in formâ pauperis* under Order XXXIII of the Code of Civil Procedure, and whereas the Court sees no reason to reject the application ; and whereas the day of 19 has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof :

Notice is hereby given to you under rule 4 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said day of 19 .

Given under my hand and the seal of the Court, this day of 19 .

Judge.

No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE.

(Section 145.)

(*Title.*)

To

WHEREAS you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit ; and whereas a decree was passed on the day of 19 against the said defendant for the payment of and whereas application has been made for execution of the said decree against you :

Take notice that you are hereby required on or before the day of 19 to show cause why the said decree should not be executed against you, and if no sufficient cause shall be within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 14.

REGISTER OF CIVIL SUITS.

(O. 4, r. 2.)

Court of the of at

REGISTER OF CIVIL SUITS IN THE YEAR 19 .

Date of presentation of plaint.	Number of suit.	Plaintiff.			Defendant.			Claim.			Appearance.			Judgment.			Appeal.		Execution.					Return of Execution.		
		Name.	Description.	Place of residence.	Name.	Description.	Place of residence.	Particulars.	Amount or value.	When the cause of action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or amount.	Date of decision of appeal.	Judgment in appeal.	Date of application.	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 or arrest, and date of every return.

NOTE.—Where there are numerous plaintiffs or numerous defe dants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

No. 15.

REGISTER OF APPEALS.

(O. 41, r. 9.)

COURT (*OR* HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES IN THE YEAR 19 .

Date of memorandum.	Number of appeal.	Appellant.			Respondent.			Decree appealed from.				Appearance.			Judgment.			
		Name.	Description.	Place of residence.	Name.	Description.	Place of residence.	Of what Court.	Number of original suit.	Particulars.	Amount or value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or varied.	For what or amount.	

THE SECOND SCHEDULE.[1]

* * * * *

THE THIRD SCHEDULE.

EXECUTION OF DECREES BY COLLECTORS.

Powers of Collector.

1. Where the execution of a decree has been transferred to the Collector under section 68, he may—

(*a*) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree; or

(*b*) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(*c*) sell the property ordered to be sold or so much thereof as may be necessary.

Procedure of Collector in special cases.

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

3. (*1*) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

(*a*) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(*b*) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

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[1] Repealed by Burma Act IV, 1944.

(2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit ; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of decrees for payment of money to be ascertained and immoveable property available for their satisfaction.

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decree and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

Where District Court may issue notices and hold inquiry.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court ; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Effect of decision of Court as to dispute.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Scheme for liquidation of decrees for payment of money.

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or

(*b*) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

(i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or

(ii) by mortgaging the whole or any part of such property ; or

(iii) by selling part of such property ; or

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or

(v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(*3*) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(*4*) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the President of the Union.

Recovery of balance (if any) after letting or management.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector to render account to Court.

9. (*1*) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

(*a*) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

(*b*) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 73 direct; or

(*c*) where the Collector has proceeded under paragraph 2,—

(i) in keeping down the interest on incumbrances on the property;

(ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistance to such amount as the Court thinks fit; and

(iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

Sales how to be conducted.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

(*a*) fix a reasonable reserved price for each lot;

(*b*) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;

(*c*) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

Provision where property is in several districts.

12. Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the President of the Union may by general rule or special order direct.

Powers of Collector to compel attendance and production.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a civil Court to compel the attendance of parties and witnesses and the production of documents.

THE COURT FEES ACT.

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THE COURT FEES ACT.

[INDIA ACT VII. 1870.] (1st April, 1870.)

CHAPTER I.

PRELIMINARY.

1-2. * * * *

CHAPTER II.

FEES IN THE HIGH COURT.

Levy of fees in the High Court on the original side.

3. The fees payable for the time being to the clerks and officers of the High Court [* * * *][1] or chargeable in such Court under No. 11 of the First, and Nos. 7, 12, 14, 20 and 21 of the Second Schedule to this Act annexed shall be collected in manner hereinafter appearing.

Fees on documents filed, etc., in the High Court in its extra-ordinary jurisdiction; in its appellate jurisdiction;

4. No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, the High Court in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal juridiction;

or in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one or more Judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

or in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. as a Court of reference and revision.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or advocate, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in the High Court, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of the High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf. Procedure in case of difference as to necessity or amount of fee.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

CHAPTER III.

Fees in other Courts and in Public Offices.

6. Except in the High Court, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. Fees on documents filed, etc., in other Courts or in public offices.

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:— Computation of fees payable in certain suits;

i. In suits for money (including suits for damages or compensation, or arrears of maintenance or annuities, or of other sums payable periodically)—according to the amount claimed. for money;

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year. for maintenance and annuities;

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint. for moveable property having a market-value;

iv. In suits—

(*a*) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title, for moveable property of no market-value;

to enforce a right to share in joint family property;

(*b*) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief;

(*c*) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction;

(*d*) to obtain an injunction,

for easements;

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts;

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

for possession of land, houses and gardens;

v. In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(*a*) * * * *

(*b*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable;

(*c*) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits;

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—the market-value of the land;

Explanation.—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

(*e*) where the subject-matter is a house or garden— for houses and gardens;

according to the market-value of the house or garden.

vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed. to enforce a right of pre-emption;

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint. for interest of assignee of land-revenue;

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached: to set aside an attachment;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

ix. In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage, to redeem; to foreclose;

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage.

x. In suits for specific performance— for specific performance;

(*a*) of a contract of sale—according to the amount of the consideration;

(*b*) of a contract of mortgage—according to the amount agreed to be secured;

(*c*) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term;

(*d*) of an award—according to the amount or value of the property in dispute.

xi. In the following suits between landlord and tenant:— between landlord and tenant.

(*a*) for the delivery by a tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*c*) for the delivery by a landlord of a lease,

(*cc*) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy,

(*d*) to contest a notice of ejectment,

(*e*) to recover the occupancy of immoveable property from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent--

according to the amount of the rent of the immoveable property to which the suit refers, payable for the year next before the date of presenting the plaint.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs v and vi, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Procedure where nett profits or market-value wrongly estimated.

10. (*1*) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

(*2*) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Decision of question as to valuation.

12. (*1*) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(*2*) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph 2, shall apply.

Refund of fee paid on memorandum of appeal.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Order 41 of the same Code, for a second decision by the lower Court, the appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on application for review of judgment.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (*b*) or clause (*d*).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. * * * *

Multifarious suits.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, [Order II, rule 6] [1].

Written examinations of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee :—

(i) Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of [the Burma] [2] army not in civil employment.

(ii) * * * *

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv)—(vii) * * * *

(viii) Probate of a will or letters of administration, where the amount or value of the property in respect of which the probate or letters shall be granted does not exceed one thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

(x) Application relating to a supply for irrigation of water belonging to Government.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or

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[1] Substituted by Burma Act II, 1945.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or laid to or before a police-officer.

(xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the Penal Code), a municipal officer, or an officer or servant of a railway administration.

(xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) Petition of appeal against any municipal tax.

(xxii) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xxiii) * * * *

(xxiv) Petitions under the Christian Marriage Act, sections 45 and 48.

CHAPTER IIIA.

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Financial Commissioner

and delivers to the Financial Commissioner a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if the Financial Commissioner is satisfied that a greater fee was paid on the probate or letters than the law required,

the Financial Commissioner may—

(*a*) cancel the stamp on the probate or letters if such stamp has not been already cancelled ;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon ; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

19B. Whenever it is proved to the satisfaction of the Financial Commissioner that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act, the Financial Commissioner may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the Financial Commissioner may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

19C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust property though not covered by court-fee.

19D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Provision for case where too low a court-fee has been paid on probates, etc.

19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Financial Commissioner may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produce

after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on probate or letters, and if the Financial Commissioner is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the Financial Commissioner may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19E.

19F. In case of letters of administration on which too low a court-fee has been paid at first, the Financial Commissioner shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of underpayment.

19G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the Financial Commissioner and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Notice of applications for probate or letters of administration to be given to revenue-authorities, and procedure thereon.

19H. (*1*) Where an application for probate or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(*2*) Where such an application as aforesaid is made to the High Court, the High Court shall cause notice of the application to be given to the Financial Commissioner.

(*3*) The Collector, within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made ; if, and on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(*4*) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court, before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by the Succession Act.

(*5*) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(*6*) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(*7*) The finding of the Court recorded under sub-section (*5*) shall be final, but shall not bar the entertainment and disposal by the Financial Commissioner of any application under section 19E.

(*8*) The President of the Union may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (*3*).

Payment of court-fees in respect of probates and letters of administration.

19I. (*1*) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation.

(*2*) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (*4*).

Recovery of penalties, etc.

19J. (*1*) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (*6*), and any penalty or forfeiture under section 19G, may, on the certificate of the Financial Commissioner, be recovered from the executor or administrator as if it were an arrear of land-revenue.

(*2*) The Financial Commissioner may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration. Sections 6 and 28 not to apply to probates or letters of administration.

CHAPTER IV.[1]

PROCESS-FEES.

20. The High Court shall make rules[2] as to the following matters :— Rules as to costs of processes.

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other civil and revenue Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

All such rules shall, after being confirmed by the President of the Union, be published in the Gazette, and shall thereupon have the force of law. Confirmation and publication of rules.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table [* * *][3], showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court. Tables of process-fees.

22. Subject to rules to be made by the High Court and approved by the President of the Union, every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto, and for the purposes of this section, every Court of Small Causes established under the Burma Small Cause Courts Act shall be deemed to be subordinate to the District Judge. Number of peons in District and subordinate Courts. Number of peons in Small Cause Courts.

23. Subject to rules to be framed by the Financial Commissioner and approved by the President of the Union, every officer performing the functions of a Collector of a district shall fix, and may from time to time alter, the Number of peons in Revenue Courts.

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[1] Sections 20 to 23 do not apply to areas in which the Process Fees Act (*post*) is in force, *see* section 2 of that Act.

[2] For the High Court Process Fees Rules, *see* Burma Gazette, 1940, Part I, page 1445.

[3] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. * * * *

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

[1]25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Stamps to be impressed or adhesive.

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the President of the Union may, by notification [2] in the Gazette, from time to time direct.

Rules for supply, number, renewal and keeping accounts of stamps.

27. The President of the Union may, from time to time, make rules for regulating—

(*a*) the supply of stamps to be used under this Act ;

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act ;

(*c*) the renewal of damaged or spoiled stamps ; and

(*d*) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section 3 in the High Court, such rules shall be made with the concurrence of the Chief Justice of the Court.

All such rules shall be published in the Gazette, and shall thereupon have the force of law.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of the High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct ; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

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[1] See also section 3 (*e*) of the Process Fees Act (*post*).

[2] For directions under this section, *see* Burma Gazette, 1939, Part I, page 1124.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp. **Amended document.**

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled. **Cancellation of stamp.**

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effec such cancellation by punching [* * *][1] so as tot leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

31-32. * * * *

33. Whenever the filing or exhibition in a criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition. **Admission in criminal cases of documents for which proper fee has not been paid.**

34. (*1*) The President of the Union may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons. **Sale of stamps.**

(*2*) All such rules shall be published in the Gazette, and shall thereupon have the force of law.

(*3*) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, [and any person who is in illegal possession of any stamp][2], shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

35. The President of the Union may, from time to time by notification[3] in the Gazette, reduce or remit, in the whole or in any part of the Union of Burma, all or any of the fees mentioned in the First and Second Schedules to this Act annexed, and may in like manner cancel or vary such order. **Power to reduce or remit fees.**

36. Nothing in Chapters II and V of this Act applies to the fees which any officer of the High Court is allowed to receive in addition to a fixed salary. **Saving of fees to certain officers of the High Court.**

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[1] Deleted by Burma Act XXXIX, 1946.

[2] Inserted by Act XXIV, 1950.

[3] For such a notification, *see* Burma Gazette, 1939, Part I, page 1122.

SCHEDULE I.*

Ad valorem *Fees.*

Number.	—	Proper Fee.
1. [1]Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any civil or revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Eight annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Eight annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Seven rupees and eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees and eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Thirty-seven rupees and eight annas.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be five thousand rupees.	

* As amended by Burma Act XXXIX, 1946. For later amendments, *see* Act XXIX, 1957 and Act XXIV, 1958.

[1] To ascertain the proper fee leviable on the institution of a suit, *see* the Table annexed to this Schedule.

SCHEDULE I—*contd.*

Ad valorem *Fees*—contd.

Number.	—	Proper Fee.
2. Plaint in a suit for possession under the Specific Relief Act, section 9. 3. * * * *	...	A fee of one-half the amount prescribed in the foregoing scale.
4. Application for review of judgment if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	...	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any civil Court other than the High Court, or by the presiding officer of any revenue Court or office, or by any other judicial or executive authority—	
	(*a*) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Eight annas.
	(*b*) If such amount or value exceeds fifty rupees.	One rupee.
	When such judgment or order is passed by the High Court.	Two rupees.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any civil Court other than the High Court, or by any revenue Court—	
	(*a*) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	One rupee.
	(*b*) If such amount or value exceeds fifty rupees.	Two rupees.
	When such decree or order is made by the High Court.	Eight rupees.
8. Copy of any document liable to stamp-duty under the Burma Stamp Act, when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*) When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(*b*) In any other case ...	One rupee.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any civil or criminal or revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	One rupee.

SCHEDULE I—*contd.*

Ad valorem *Fees*.—concld.

Number.	——	Proper Fee.
10. * * * *	...	...
11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Three per centum on such amount or value.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.	Four per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees:	Five per centum on such amount or value.
	Provided that when, after the grant of a Succession Certificate in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
12. Succession Certificate ...	In any case	Three per centum on the amount or value of any debt or security specified in the certificate and five per centum on the amount or value of any debt or security to which the certificate is extended. NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
12A-13. * * * *	...	...
14. Application to the High Court for the exercise of its revisional jurisdiction.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Three rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees leviable on the institution of Suits.**

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
...	5	0 8 0
5	10	1 0 0
10	15	1 8 0
15	20	2 0 0
20	25	2 8 0
25	30	3 0 0
30	35	3 8 0
35	40	4 0 0
40	45	4 8 0
45	50	5 0 0
50	55	5 8 0
55	60	6 0 0
60	65	6 8 0
65	70	7 0 0
70	75	7 8 0
75	80	8 0 0
80	85	8 8 0
85	90	9 0 0
90	95	9 8 0
95	100	10 0 0
100	110	11 0 0
110	120	12 0 0
120	130	13 0 0
130	140	14 0 0
140	150	15 0 0
150	160	16 0 0
160	170	17 0 0
170	180	18 0 0
180	190	19 0 0

* This table has been revised in the light of the amendments made by Burma Act XXXIX, 1946.

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. a. p.
190	200	20 0 0
200	210	21 0 0
210	220	22 0 0
220	230	23 0 0
23	240	24 0 0
240	250	25 0 0
250	260	26 0 0
260	270	27 0 0
270	280	28 0 0
280	290	29 0 0
290	300	30 0 0
300	310	31 0 0
310	320	32 0 0
320	330	33 0 0
330	340	34 0 0
340	350	35 0 0
350	360	36 0 0
360	370	37 0 0
370	380	38 0 0
380	390	39 0 0
390	400	40 0 0
400	410	41 0 0
410	420	42 0 0
420	430	43 0 0
430	440	44 0 0
440	450	45 0 0
450	460	46 0 0
460	470	47 0 0
470	480	48 0 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
480	490	49 0 0
490	500	50 0 0
500	510	51 0 0
510	520	52 0 0
520	530	53 0 0
530	540	54 0 0
540	550	55 0 0
550	560	56 0 0
560	570	57 0 0
570	580	58 0 0
580	590	59 0 0
590	600	60 0 0
600	610	61 0 0
610	620	62 0 0
620	630	63 0 0
630	640	64 0 0
640	650	65 0 0
650	660	66 0 0
660	670	67 0 0
670	680	68 0 0
680	690	69 0 0
690	700	70 0 0
700	710	71 0 0
710	720	72 0 0
720	730	73 0 0
730	740	74 0 0
740	750	75 0 0
750	760	76 0 0
760	770	77 0 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
770	780	78 0 0
780	790	79 0 0
790	800	80 0 0
800	810	81 0 0
810	820	82 0 0
820	830	83 0 0
830	840	84 0 0
840	850	85 0 0
850	860	86 0 0
860	870	87 0 0
870	880	88 0 0
880	890	89 0 0
890	900	90 0 0
900	910	91 0 0
910	920	92 0 0
920	930	93 0 0
930	940	94 0 0
940	950	95 0 0
950	960	96 0 0
960	970	97 0 0
970	980	98 0 0
980	990	99 0 0
990	1,000	100 0 0
1,000	1,100	107 8 0
1,100	1,200	115 0 0
1,200	1,300	122 8 0
1,300	1,400	130 0 0
1,400	1,500	137 8 0
1,500	1,600	145 0 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
1,600	1,700	152 8 0
1,700	1,800	160 0 0
1,800	1,900	167 8 0
1,900	2,000	175 0 0
2,000	2,100	182 8 0
2,100	2,200	190 0 0
2,200	2,300	197 8 0
2,300	2,400	205 0 0
2,400	2,500	212 8 0
2,500	2,600	220 0 0
2,600	2,700	227 8 0
2,700	2,800	235 0 0
2,800	2,900	242 8 0
2,900	3,000	250 0 0
3,000	3,100	257 8 0
3,100	3,200	265 0 0
3,200	3,300	272 8 0
3,300	3,400	280 0 0
3,400	3,500	287 8 0
3,500	3,600	295 0 0
3,600	3,700	302 8 0
3,700	3,800	310 0 0
3,800	3,900	317 8 0
3,900	4,000	325 0 0
4,000	4,100	332 8 0
4,100	4,200	340 0 0
4,200	4,300	347 8 0
4,300	4,400	355 0 0
4,400	4,500	362 8 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds	But does and exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
4,500	4,600	370 0 0
4,600	4,700	377 8 0
4,700	4,800	385 0 0
4,800	4,900	392 8 0
4,900	5,000	400 0 0
5,000	5,250	415 0 0
5,250	5,500	430 0 0
5,500	5,750	445 0 0
5,750	6,000	460 0 0
6,000	6,250	475 0 0
6,250	6,500	490 0 0
6,500	6,750	505 0 0
6,750	7,000	520 0 0
7,000	7,250	535 0 0
7,250	7,500	550 0 0
7,500	7,750	565 0 0
7,750	8,000	580 0 0
8,000	8,250	595 0 0
8,250	8,500	610 0 0
8,500	8,750	625 0 0
8,750	9,000	640 0 0
9,000	9,250	655 0 0
9,250	9,500	670 0 0
9,500	9,750	685 0 0
9,750	10,000	700 0 0
10,000	10,500	722 8 0
10,500	11,000	745 0 0
11,000	11,500	767 8 0
11,500	12,000	790 0 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount of value of the subject matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
12,000	12,500	812 8 0
12,500	13,000	835 0 0
13,000	13,500	857 8 0
13,500	14,000	880 0 0
14,000	14,500	902 8 0
14,500	15,000	925 0 0
15,000	15,500	947 8 0
15,500	16,000	970 0 0
16,000	16,500	992 8 0
16,500	17,000	1,015 0 0
17,000	17,500	1,037 8 0
17,500	18,000	1,060 0 0
18,000	18,500	1,082 8 0
18,500	19,000	1,105 0 0
19,000	19,500	1,127 8 0
19,500	20,000	1,150 0 0
20,000	21,000	1,180 0 0
21,000	22,000	1,210 0 0
22,000	23,000	1,240 0 0
23,000	24,000	1,270 0 0
24,000	25,000	1,300 0 0
25,000	26,000	1,330 0 0
26,000	27,000	1,360 0 0
27,000	28,000	1,390 0 0
28,000	29,000	1,420 0 0
29,000	30,000	1,450 0 0
30,000	32,000	1,480 0 0
32,000	34,000	1,510 0 0
34,000	36,000	1,540 0 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
36,000	38,000	1,570 0 0
38,000	40,000	1,600 0 0
40,000	42,000	1,630 0 0
42,000	44,000	1,660 0 0
44,000	46,000	1,690 0 0
46,000	48,000	1,720 0 0
48,000	50,000	1,750 0 0
50,000	55,000	1,787 8 0
55,000	60,000	1,825 0 0
60,000	65,000	18,62 8 0
65,000	70,000	1,900 0 0
70,000	75,000	1,937 8 0
75,000	80,000	1,975 0 0
80,000	85,000	2,012 8 0
85,000	90,000	2,050 0 0
90,000	95,000	2,087 8 0
95,000	1,00,000	2,125 0 0
1,00,000	1,95,000	2,162 8 0
1,05,000	1,10,000	2,200 0 0
1,10,000	1,15,000	2,237 8 0
1,15,000	1,20,000	2,275 0 0
1,20,000	1,25,000	2,312 8 0
1,25,000	1,30,000	2,350 0 0
1,30,000	1,35,000	2,387 8 0
1,35,000	1,40,000	2,425 0 0
1,40,000	1,45,000	2,462 8 0
1,45,000	1,50,000	2,500 0 0
1,50,000	1,55,000	2,537 8 0
1,55,000	1,60,000	2,575 0 0

SCHEDULE I—*contd.*

Table of Rates of ad valorem *Fees, etc.*—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
1,60,000	1,65,000	2,612 8 0
1,65,000	1,70,000	2,650 0 0
1,70,000	1,75,000	2,687 8 0
1,75,000	1,80,000	2,725 0 0
1,80,000	1,85,000	2,762 8 0
1,85,000	1,90,000	2,800 0 0
1,90,000	1,95,000	2,837 8 0
1,95,000	2,00,000	2,875 0 0
2,00,000	2,05,000	2,912 8 0
2,05,000	2,10,000	2,950 0 0
2,10,000	2,15,000	2,987 8 0
2,15,000	2,20,000	3,025 0 0
2,20,000	2,25,000	3,062 8 0
2,25,000	2,30,000	3,100 0 0
2,30,000	2,35,000	3,137 8 0
2,35,000	2,40,000	3,175 0 0
2,40,000	2,45,000	3,212 8 0
2,45,000	2,50,000	3,250 0 0
2,50,000	2,55,000	3,287 8 0
2,55,000	2,60,000	3,325 0 0
2,60,000	2,65,000	3,362 8 0
2,65,000	2,70,000	3,400 0 0
2,70,000	2,75,000	3,437 8 0
2,75,000	2,80,000	3,475 0 0
2,80,000	2,85,000	3,512 8 0
2,85,000	2,90,000	3,550 0 0
2,90,000	2,95,000	3,587 8 0
2,95,000	3,00,000	3,625 0 0
3,00,000	3,05,000	3,662 8 0

SCHEDULE I—*concld.*

Table of Rates of ad valorem *Fees, etc.*—concld.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. a. p.
3,05,000	3,10,000	3,700 0 0
3,10,000	3,15,000	3,737 8 0
3,15,000	3,20,000	3,775 0 0
3,20,000	3,25,000	3,812 8 0
3,25,000	3,30,000	3,850 0 0
3,30,000	3,35,000	3,887 8 0
3,35,000	3,40,000	3,925 0 0
,40,000	3,45,000	3,962 8 0
3,45,000	3,50,000	4,000 0 0
3,50,000	3,55,000	4,037 8 0
3,55,000	3,60,000	4,075 0 0
3,60,000	3,65,000	4,112 8 0
3,65,000	3,70,000	4,150 0 0
3,70,000	3,75,000	4,187 8 0
3,75,000	3,80,000	4,225 0 0
3,80,000	3,85,000	4,262 8 0
3,85,000	3,90,000	4,300 0 0
3,90,000	3,95,000	4,337 8 0
3,95,000	4,00,000	4,375 0 0
4,00,000	4,05,000	4,412 8 0
4,05,000	4,10,000	4,450 0 0
4,10,000	4,15,000	4,487 8 0
4,15,000	4,20,000	4,525 0 0
4,20,000	4,25,000	4,562 8 0
4,25,000	4,30,000	4,600 0 0
4,30,000	4,35,000	4,637 8 0
4,35,000	4,40,000	4,675 0 0
4,40,000	4,45,000	4,712 8 0
4,45,000	4,50,000	4,750 0 0
4,50,000	4,55,000	4,787 8 0
4,55,000	4,60,000	48,25 0 0
4,60,000	4,65,000	4,862 8 0
4,65,000	4,70,000	4,900 0 0
4,70,000	4,75,000	4,937 8 0
4,75,000	4,80,000	4,975 0 0
4,80,000	...	5,000 0 0

SCHEDULE II.*

Fixed Fees.

Number.	—	Proper Fee.
1. Application or petition ...	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any civil Court other than a principal civil Court of original jurisdiction, or to any Court of Small Causes or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any civil, criminal or revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office.	Two annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Code of Criminal Procedure, arrest without warrant, and presented to any criminal Court:	Twelve annas.

* As amended by Burma Act XXXIX, 1946. For later amendments *see* Act XXIX, 1957.

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.	—	Proper Fee.
1. Application or petition—*concld.*	or when presented to a civil, criminal or revenue Court, or to a Collector, or any revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act; or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant; or when containing a request for the issue or renewal of a licence under the rules made under the Petroleum Act.	Twelve annas.
	(*c*) When presented to the Financial Commissioner or Chief Executive Authority, or a Commissioner.	One rupee and eight annas.
	(*d*) When presented to the High Court.	Three rupees.
1A. Application to any civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	One rupee and eight annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.
2. Application for leave to sue as a pauper.	.....	Twelve annas.
3. Application for leave to appeal as a pauper.	(*a*) When presented to a District Court. (*b*) When presented to a Commissioner or the High Court.	One rupee and eight annas. Three rupees.
4. * * * *		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, or the Code of Civil Procedure, and not otherwise provided for by this Act.	.....	Twelve annas.
7. Undertaking under section 49 of the Burma Divorce Act.		
8-9. * * * *		

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.	——	Proper Fee.
10. Authority to plead or act for another person.	When presented for the conduct of any one case—	
	(*a*) to any civil or criminal Court other than the High Court, or to any revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number.	Twelve annas.
	(*b*) to a Commissioner of Revenue or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	One rupee and eight annas.
	(*c*) to the High Court, Financial Commissioner or other Chief Executive Authority.	Three rupees.
11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented—	(*a*) to any civil Court other than the High Court, or to any revenue Court or executive officer other than the High Court or Financial Commissioner or other Chief Executive Authority.	Twelve annas.
	(*b*) to the High Court, Financial Commissioner or other Chief Executive Authority.	Three rupees.
12. Caveat	...	Seven rupees and eight annas.
13. * * * *		
14. Petition in a suit under the Native Converts' Marriage Dissolution Act.	...	Seven rupees and eight annas.
15-16. * * * *		
17. Plaint or memorandum of appeal in each of the following suits:—		
(i) to alter or set aside a summary decision or order of any of the civil Courts [other than the High Court][1] or of any revenue Court;		
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;	...	Fifteen rupees.
(iii) to obtain a declaratory decree where no consequential relief is prayed;		
(iv) to set aside an award;		
(v) to set aside an adoption;		

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

SCHEDULE II—*concld.*

Fixed Fees—concld.

Number.	——	Proper Fee.
17. Plaint or memorandum of appeal in each of the following suits—*concld.* (vi) every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	...	Fifteen rupees.
18. Application under [the Arbitration Act, 1944].[1]	...	Fifteen rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure.	...	Fifteen rupees.
20. Every petition under the Burma Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	...	Thirty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act.	...	Thirty rupees.

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

SCHEDULE III.

(*See* section 19-I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY.)

IN THE COURT OF

Re Probate of the Will of (*or administration of the property and credits of*), *deceased.*

I solemnly affirm / make oath and say that I am the executor (or one of the executors or one of the next-of-kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come or are likely to come to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF , DECEASED.	Rs.	A.	P.
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc. ... ... (*State estimated value according to best of executor's or administrator's belief.*)			
Property in Government securities transferable at the Public Debt Office ... ... (*State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Immoveable property consisting of ... ... (*State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.*)			
Leasehold property ... ... (*If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.*)			
Property in public companies ... ... (*State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money ... ... (*State the amount of the whole; also the interest separately, calculating it to the time of making the application.*)			
Book debts ... ... (*Other than bad.*)			
Stock in trade ... ... (*State the estimated value, if any.*)			
Other property not comprised under the foregoing heads. (*State the estimated value, if any.*)			
TOTAL ...			
Deduct amount shown in Annexure B not subject to duty			
NET TOTAL ...			

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate			
Amount of funeral expenses			
Amount of mortgage incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest			
Other property not subject to duty			
TOTAL ...			

THE PROCESS FEES ACT.

[BURMA ACT I, 1910.] (26th August, 1912.)

1. * * * *

Sections of the Court Fees Act which shall not apply to area in which this Act is in force.

2. Sections 20, 21, 22 and 23 of the Court Fees Act shall not apply to the area in which this Act is in force.

General power of President to make rules.

3. Notwithstanding anything in section 25 of the Court Fees Act, the President of the Union may make rules with respect to—

(*a*) theestablishments o be maintained for the service and execution ofprocesses andtnotices issued by civil and criminal Courts and by revenue officers and executive officers of Government;

(*b*) the remuneration of the peons and other persons employed in such service and execution;

(*c*) the maintenance of registers in connection with the issue and service of such processes and notices;

(*d*) the fees chargeable for such service and execution; and

(*e*) the manner in which such fees shall be levied and recovered.

THE SUITS VALUATION ACT.

[INDIA ACT VII, 1887.] (11th February, 1887.)

1. * * * *

PART I.

SUITS RELATING TO LAND.

Extent and commencement of Part I.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the President of the Union by notification in the Gazette directs.

Power for President to make rules determining value of land for jurisdictional purposes.

3. (*1*) The President of the Union may make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, section 7, paragraphs v and vi, and paragraph x, clause (*d*).

(*2*) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

4. Where a suit mentioned in the Court Fees Act, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

Making and enforcement of rules.

5. (*1*) The President of the Union shall, before making rules under section 3, consult the High Court with respect thereto.

(*2*) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the Gazette.

6. * * * *

PART II.[1]

OTHER SUITS.

7. * * * *

Court-fee value and jurisdictional value to be the same in certain suits.

8. Where in suits, other than those referred to in the Court Fees Act, section 7, paragraphs v, vi and ix, and paragraph x, clause (*d*), court-fees are payable *ad valorem* under the Court Fees Act, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

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[1] Part II of this Act, which extends to the whole of the Union of Burma, came into force on the 1st July 1887, *see* section 7 of India Act VII, 1887.

Determination of value of certain suits by High Court.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court Fees Act, section 7, paragraphs v and vi, and paragraph x, clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the President of the Union, direct that suits of that class shall, for the purposes of the Court Fees Act and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

10. * * * *

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

[1]**11.** (*1*) Notwithstanding anything in the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (*1*), but the appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(*3*) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

[1] Section 11 extends to the whole of the Union of Burma, and came into force on the 1st July, 1887, *see* sub-section (*5*) of section 11 of India Act VII, 1887.

(*4*) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 115 of the Code of Civil Procedure or other enactment for the time being in force.

(5) * * * *

THE LIMITATION ACT.

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THE LIMITATION ACT.

[INDIA ACT IX, 1908.] (1st January, 1909.)

PART I.

PRELIMINARY.

1. * * * *

Definitions.

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

(1) "applicant" includes any person from or through whom an applicant derives his right to apply ;

(2) "bill of exchange" includes a hundi and a cheque ;

(3) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued ;

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another ;

(6) "foreign country" means any country other than the Union of Burma ;

(7) "good faith" : nothing shall be deemed to be done in good faith which is not done with due care and attention ;

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue ;

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight ;

(10) "suit" does not include an appeal or an application ; and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

Dismissal of suits, etc., instituted, etc., after period of limitation.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is made ; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator

Where Court is closed when period expires.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Extension of period in certain cases.

5. Any appeal or application for a review of judgment or for leave to appeal, or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal disability.

6. (*1*) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the First Schedule.

(*2*) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(*3*) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(*4*) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (*1*) and (*2*) shall apply.

Illustrations.

(*a*) The right to sue for the hire of a boat accrues to *A* during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(*b*) A right to sue accrues to *Z* during his minority. After the accruer, but while *Z* is still a minor, he becomes insane. Time runs against *Z* from the date when his insanity and minority cease.

(*c*) A right to sue accrues to X during his minority. *X* dies before attaining majority, and is succeeded by *Y*, his minor son. Time runs against *Y* from the date of his attaining majority.

Disability of one of several plaintiffs or applicants.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.

(*a*) *A* incurs a debt to a firm of which *B*, *C* and *D* are partners. *B* is insane, and *C* is a minor *D* can give a discharge of the debt without the concurrence of *B* and *C*. Time runs against *B*, *C* and *D*.

(*b*) *A* incurs a debt to a firm of which *E*, *F* and *G* are partners. *E* and *F* are insane, and *G* is a minor. Time will not run against any of them until either *E* or *F* becomes sane, or *G* attains majority.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend for more than three years from the cessation of the disability or the death of the person affected thereby the period within which any suit must be instituted or application made. Special exceptions.

Illustrations.

(*a*) *A*, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. *A* has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(*b*) A right to sue for an hereditary office accrues to *A* who at the time is insane. Six years after the accruer *A* recovers his reason. *A* has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(*c*) A right to sue as landlord to recover possession from a tenant accrues to *A*, who is an idiot. *A* dies three years after the accruer, his idiocy continuing up to the date of his death. *A*'s representative in interest has, under the ordinary law, nine years from the date of *A*'s death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Where once time has begun to run, no subsequent disability or inability to sue stops it: Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Suits against express trustees and their representatives.

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

11. (*1*) Suits instituted in the Union of Burma on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act. Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in the Union of Burma on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of time in legal proceedings.

12. (*1*) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(*2*) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(*3*) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(*4*) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from the Union of Burma.

[1] **13.** In computing the period of limitation prescribed for any suit there shall be excluded the time during which the defendant has been absent from the Union of Burma.

Exclusion of time of proceeding *bonâ fide* in Court without jurisdiction.

14. (*1*) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(*2*) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Exclusion of time during which proceedings are suspended.

15. (*1*) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(*2*) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

Exclusion of time during which proceedings to set aside execution-sale are pending.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Effect of death before right to sue accrues.

17. (*1*) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deseased capable of instituting or making such suit or application.

(*2*) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(*3*) Nothing in sub-sections (*1*) and (*2*) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

Effect of fraud.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—

(*a*) against the person guilty of the fraud or accessory thereto, or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

19. (*1*) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(*2*) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed ; but, subject to the provisions of the Evidence Act, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

Effect of payment of interest as such or of part payment of principal.

20. (*1*) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Effect of receipt of produce of mortgaged land.

(*2*) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (*1*).

Explanation.—Debt includes money payable under a decree or order of Court.

Agent of person under disability.

21. (*1*) The expression "agent duly authorized in this behalf," in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Acknowledgment or payment by one of several joint contractors, etc

(*2*) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

(*3*) For the purposes of the said sections—

(*a*) an acknowledgment signed, or a payment made, in respect of any liability, by, or by the duly authorized agent of, any widow or other limited owner of property who is governed by the Hindu law shall be a valid acknowledgment or payment, as the case may be, as against a reversioner succeeding to such liability; and

(*b*) where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorized agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

Effect of substituting or adding new plaintiff or defendant.

22. (*1*) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(*2*) Nothing in sub-section (*1*) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Continuing breaches and wrongs.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Suit for compensation for act not actionable without special damage.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration.

A owns the surface of a field. *B* owns the subsoil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

Computation of time mentioned in instruments.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(*a*) A Hindu makes a promissory note bearing a native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(*b*) A Hindu makes a bond, bearing a native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

PART IV.

Acquisition of Ownership by Possession.

Acquisition of right to easements.

26. (*1*) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly

enjoyed by any person claiming title thereto as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(*2*) Where the property over which a right is claimed under sub-section (*1*) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

(*a*) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement.

27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over *B*'s land. *A* proves that he has enjoyed the right for twenty-five years; but *B* shows that during ten of these years *C*, a Hindu widow, had a life interest in the land, that on *C*'s death *B* became entitled to the land, and that within two years after *C*'s death he contested *A*'s claim to the right. The suit must be dismissed, as *A*, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to property.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V.

SAVINGS.

Savings.

29. (*1*) Nothing in this Act shall affect section 25 of the Contract Act.

(*2*) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(*a*) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law ; and

(*b*) the remaining provisions of this Act shall not apply.

(*3*) Nothing in this Act shall apply to suits under the Burma Divorce Act.

THE FIRST SCHEDULE.

(*See* Section 3.)

FIRST DIVISION : SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part I.—Thirty days.	
1. To contest an award under the Waste Lands Claims Act.	Thirty days ...	When notice of the award is delivered to the plaintiff.
	Part II.—Ninety days.	
2. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the Union of Burma.	Ninety days ...	When the act or omission takes place.
	Part III.—Six months.	
3. Under the Specific Relief Act, section 9, to recover possession of immoveable property.	Six months ...	When the dispossession occurs.
4. * * * *	*Part IV.—One year.*	
5. Under the summary procedure referred to in section 128 (2) (*f*) of the Code of Civil Procedure where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code.	One year	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
6. Upon a Statute, Act, Regulation or bye-law, for a penalty or forfeiture.	One year	When the penalty or forfeiture is incurred.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.—One year—contd.	
7. For the wages of a household servant, artisan or labourer.	One year ...	When the wages accrue due.
8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	One year ...	When the food or drink is delivered.
9. For the price of lodging	One year ...	When the price becomes payable.
10. To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	One year ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11. By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :	One year ...	The date of the order.
(1) order under the Code of Civil Procedure, on a claim preferred to, or an objection made to, the attachment of property attached in execution of a decree ;		
(2) * * * *		
11A. By a person against whom an order has been made under the Code of Civil Procedure upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	One year ...	Ditto.
12. To set aside any of the following sales :—	One year ..	When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought.
(a) sale in execution of a decree of a civil Court ;		

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.—One year—contd.	
12. To set aside any of the following sales.—*contd.*		
(*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue ; (*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears.		
13. To alter or set aside a decision or order of a civil Court in any proceeding other than a suit.	One year ...	The date of the final decision or order in the case by a Court competent to determine it finally.
14. To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year ...	The date of the act or order.
15. Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	One year ...	When the attachment, lease or transfer is made.
16. Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	One year ...	When the payment is made.
17. Against Government for compensation for land acquired for public purposes.	One year ...	The date of determining the amount of the compensation
18. Like suit for compensation when the acquisition is not completed.	One year ...	The date of the refusal to complete.
19. For compensation for false imprisonment.	One year ..	When the imprisonment ends.
20. By executors, administrators or representatives under the Legal Representatives' Suits Act	One year ...	The date of the death of the person wronged.
21. By executors, administrators or representatives under the Fatal Accidents Act.	One year ...	The date of the death of the person killed.
22. For compensation for any other injury to the person.	One year ...	When the injury is committed.
23. For compensation for a malicious prosecution.	One year ...	When the plaintiff is acquitted, or the prosecution is otherwise terminated.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part IV.—One year—concld.	
24. For compensation for libel ...	One year ...	When the libel is published.
25. For compensation for slander	One year ...	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year ...	When the loss occurs.
27. For compensation for inducing a person to break a contract with the plaintiff.	One year ...	The date of the breach.
28. For compensation for an illegal, irregular or excessive distress.	One year ...	The date of the distress.
29. For compensation for wrongful seizure of moveable property under legal process.	One year ...	The date of the seizure.
30. Against a carrier for compensation for losing or injuring goods.	One year ...	When the loss or injury occurs.
31. Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year ...	When the goods ought to be delivered.
	Part V.—Two years.	
32. Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
33. Under the Legal Representatives' Suits Act against an executor.	Two years ...	When the wrong complained of is done.
34. Under the same Act against an administrator.	Two years ...	Ditto.
35. Under the same Act against any other representative.	Two years ...	Ditto.
36. For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Two years ...	When the malfeasance, misfeasance or nonfeasance takes place.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years.	
37. For compensation for obstructing a way or a water-course.	Three years ..	The date of the obstruction.
38. For compensation for diverting a water-course.	Three years ...	The date of the diversion.
39. For compensation for trespass upon immoveable property.	Three years ...	The date of the trespass.
40. For compensation for infringing copyright or any other exclusive privilege.	Three years ...	The date of the infringement.
41. To restrain waste	Three years ...	When the waste begins.
42. For compensation for injury caused by an injunction wrongfully obtained.	Three years ...	When the injunction ceases.
43. Under the Succession Act, section 360 or section 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years ...	The date of the payment or distribution.
44. By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years ...	When the ward attains majority.
45-46. * * * *		
47. By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, or by any one claiming under such person, to recover the property comprised in such order.	Three years ...	The date of the final order in the case.
48. For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years ..	When the person having the right to the possession of the property first learns in whose possession it is.
48A To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depository or pawnee for a valuable consideration.	Three years ...	When the sale becomes known to the plaintiff.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
48B. To set aside a sale of moveable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years ...	When the sale becomes known to the plaintiff.
49. For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Three years ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50. For the hire of animals, vehicles, boats or household furniture.	Three years ...	When the hire becomes payable.
51. For the balance of money advanced in payment of goods to be delivered.	Three years ...	When the goods ought to be delivered.
52 For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Three years ...	The date of the delivery of the goods.
53. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years ...	When the period of credit expires.
54. For the price of goods sold and delivered to be paid for by a bill of exchange no such bill being given.	Three years ...	When the period of the proposed bill elapses.
55. For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years ...	The date of the sale.
56. For the price of work done by the plaintiff for the defendant at his request where no time has been fixed for payment.	Three years ...	When the work is done.
57. For money payable for money lent.	Three years ...	When the loan is made.
58. Like suit when the lender has given a cheque for the money.	Three years ...	When the cheque is paid.
59. For money lent under an agreement that it shall be payable on demand.	Three years ...	When the loan is made.
60. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Three years ...	When the demand is made.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
61. For money payable to the plaintiff for money paid for the defendant.	Three years ...	When the money is paid.
62. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years ...	When the money is received.
63. For money payable for interest upon money due from the defendant to the plaintiff.	Three years ...	When the interest becomes due.
64. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years ...	When the time specified arrives or the contingency happens.
66. On a single bond, where a day is specified for payment.	Three years ...	The day so specified.
67. On a single bond, where no such day is specified.	Three years ...	The date of executing the bond.
68. On a bond subject to a condition.	Three years ...	When the condition is broken.
69. On a bill of exchange or promissory note payable at a fixed time after date.	Three years ...	When the bill or note falls due.
70. On a bill of exchange payable at sight or after sight, but not at a fixed time.	Three years ...	When the bill is presented.
71. On a bill of exchange accepted payable at a particular place.	Three years ...	When the bill is presented at that place.
72. On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years ...	When the fixed time expires.
73. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years ...	The date of the bill or note.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
74. On a promissory note or bond payable by instalments.	Three years ...	The expiration of the first term of payment as to the part then payable : and for the other parts the expiration of the respective terms of payment.
75. On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	Three years ..	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years ...	The date of the delivery to the payee.
77. On a dishonoured foreign bill where protest has been made and notice given.	Three years ..	When the notice is given.
78. By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Three years ...	The date of the refusal to accept.
79. By the acceptor of an accommodation-bill against the drawer.	Three years ...	When the acceptor pays the amount of the bill.
80. Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years ...	When the bill, note or bond becomes payable.
81. By a surety against the principal debtor.	Three years ...	When the surety pays the creditor.
82. By a surety against a co-surety	Three years ...	When the surety pays anything in excess of his own share.
83. Upon any other contract to indemnify.	Three years ...	When the plaintiff is actually damnified.
84. By a legal practitioner for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Three years ...	The date of the termination of the suit or business, or (where the legal practitioner properly discontinues the suit or business) the date of such discontinuance.
85. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years ...	The close of the year in which the last item admitted or proved is entered in the account ; such year to be computed as in the account.
86. On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Three years ...	When proof of the death or loss is given or received to or by the insurer, whether by or from the plaintiff, or any other person.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
87. By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years ...	When the insurers elect to avoid the policy.
88. Against a factor for an account.	Three years ...	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
89. By a principal against his agent for moveable property received by the latter and not accounted for.	Three years ...	Ditto.
90. Other suits by principals against agents for neglect or misconduct.	Three years ...	When the neglect or misconduct becomes known to the plaintiff.
91. To cancel or set aside an instrument not otherwise provided for.	Three years ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92. To declare the forgery of an instrument issued or registered.	Three years ...	When the issue or registration becomes known to the plaintiff.
93. To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years ...	The date of the attempt.
94. For property which the plaintiff has conveyed while insane.	Three years ...	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95. To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years ...	When the fraud becomes known to the party wronged.
96. For relief on the ground of mistake.	Three years ...	When the mistake becomes known to the plaintiff.
97. For money paid upon an existing consideration which afterwards fails.	Three years ...	The date of the failure.
98. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years ...	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99. For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Three years ...	The date of the payment in excess of the plaintiff's own share.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—contd.	
100. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years ...	When the right to contribution accrues.
101. For a seaman's wages ...	Three years ...	The end of the voyage during which the wages are earned.
102. For wages not otherwise expressly provided for by this schedule.	Three years ...	When the wages accrue due.
103. By a Muhammadan for exigible dower (*mu'ajjal*).	Three years ...	When the dower is demanded and refused or (where during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce.
104. By a Muhammadan for deferred dower (*mu'wajjal*).	Three years ...	When the marriage is dissolved by death or divorce.
105. By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Three years ...	When the mortgagor re-enters on the mortgaged property.
106. For an account and a share of the profits of a dissolved partnership.	Three years ...	The date of dissolution.
107. By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Three years ...	The date of the payment.
108. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease	Three years ...	When the trees are cut down.
109. For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years ...	When the profits are received.
110. For arrears of rent ...	Three years ...	When the arrears become due.
111. By a vendor of immoveable property for personal payment of unpaid purchase-money.	Three years ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112. For a call by a company registered under any Statute or Act.	Three years ...	When the call is payable.
113. For specific performance of a contract.	Three years ...	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VI.—Three years—concld.	
114. For the rescission of a contract.	Three years ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115. For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Three years ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
	Part VII.—Six years.	
116. For compensation for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117. Upon a foreign judgment as defined in the Code of Civil Procedure.	Six years ...	The date of the judgment.
118. To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Six years ...	When the alleged adoption becomes known to the plaintiff.
119. To obtain a declaration that an adoption is valid.	Six years ...	When the rights of the adopted son, as such, are interfered with.
120. Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years ...	When the right to sue accrues.
	Part VIII.—Twelve years.	
121. To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a saleable tenure sold for arrears of rent.	Twelve years ...	When the sale becomes final and conclusive.
122. Upon a judgment obtained in the Union of Burma [1] * * * or a recognizance.	Twelve years ...	The date of the judgment or recognizance.
123. For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Twelve years ...	When the legacy or share becomes payable or deliverable.

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VIII.—Twelve years—contd.	
124. For possession of an hereditary office.	Twelve years ...	When the defendant takes possession of the office adversely to the plaintiff. *Explanation.*—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125. Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Twelve years ...	The date of the alienation.
126. By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Twelve years ...	When the alienee takes possession of the property.
127. By a person excluded from joint family property to enforce a right to share therein.	Twelve years ...	When the exclusion becomes known to the plaintiff.
128. By a Hindu for arrears of maintenance.	Twelve years ...	When the arrears are payable.
129. By a Hindu for a declaration of his right to maintenance.	Twelve years ...	When the right is denied.
130. For the resumption or assessment of rent-free land.	Twelve years ...	When the right to resume or assess the land first accrues.
131. To establish a periodically recurring right.	Twelve years ...	When the plaintiff is first refused the enjoyment of the right.
132. To enforce payment of money charged upon immoveable property. *Explanation.*—For the purposes of this article— (*a*) * * * * * (*b*) the value of any agricultural or other produce the right to receive which is secured by a charge upon immoveable property, and (*c*) advances secured by mortgage by deposit of title-deeds, shall be deemed to be money charged upon immoveable property.	Twelve years ...	When the money sued for becomes due.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VIII.—Twelve years—contd.	
133. • • • •		
134. To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	Twelve years ...	When the transfer becomes known to the plaintiff.
134A. To set aside a transfer of immoveable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years ...	When the transfer becomes known to the plaintiff.
134B. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years ...	The death, resignation or removal of the transferor.
134C. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of moveable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.	Twelve years ...	The death, resignation or removal of the seller.
135. Suit instituted in a Court other than the High Court by a mortgagee for possession of immoveable property mortgaged.	Twelve years ...	When the mortgagor's right to possession determines.
136. By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	Twelve years ...	When the vendor is first entitled to possession.
137. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years ...	When the judgment-debtor is first entitled to possession.
138. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Twelve years ...	The date when the sale becomes absolute.

THE FIRST SCHEDULE—*contd*

FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part VIII.—Twelve years—concld.	
139. By a landlord to recover possession from a tenant.	Twelve years ...	When the tenancy is determined.
140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	Twelve years ...	When his estate falls into possession.
141. Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years ..	When the female dies.
142. For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years ...	The date of the dispossession or discontinuance.
143. Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Twelve years ...	When the forfeiture is incurred or the condition is broken.
144. For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Twelve years ...	When the possession of the defendant becomes adverse to the plaintiff.
	Part IX.—Thirty years.	
145. Against a depositary or pawnee to recover immoveable property deposited or pawned.	Thirty years ...	The date of the deposit or pawn.
146. Before the High Court in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years ...	When any part of the principal or interest was last paid on account of the mortgage-debt.
146A. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years ...	The date of the dispossession or discontinuance.
	Part X.—Sixty years.	
147. By a mortgagee for foreclosure or sale.	Sixty years ...	When the money secured by the mortgage becomes due.

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*concld.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	Part X.—Sixty years—concld.	
148. Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Sixty years ...	When the right to redeem or to recover possession accrues.
149. Any suit by or on behalf of [1] the Government.	Sixty years ...	When the period of limitation would begin to run under this Act against a like suit by a private person.

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150. Under the Code of Criminal Procedure from a sentence of death passed by a Court of Session.	Seven days ...	The date of the sentence.
[1]150A. Under the Code of Criminal Procedure from a finding rejecting a claim under section 443 of that Code.	Seven days ...	The date of the finding.
151. From a decree or order of the High Court in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
152. Under the Code of Civil Procedure to the Court of a District Judge.	Thirty days ...	The date of the decree or order appealed from.
[1]153. [1]		
154. Under the Code of Criminal Procedure to any Court other than the High Court.	Thirty days ...	The date of the sentence or order appealed from.
155. Under the same Code to the High Court, except in the cases provided for by article 150 and article 157.	Sixty days ...	The date of the sentence or order appealed from.
156. Under the Code of Civil Procedure to the High Court, except in the cases provided for by article 151 and article 153.	Ninety days ...	The date of the decree or order appealed from.
157. Under the Code of Criminal Procedure from an order of acquittal.	Six months ...	The date of the order appealed from.

[1] Section 443 of the Code of Criminal Procedure has been deleted by Burma Act XIII, 1945.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION: APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
[1]158. Under the Arbitration Act, 1944, to set aside an award or to get an award remitted for reconsideration.	Thirty days ...	The date of service of the notice of filing of the award.
159. For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (*f*) or under Order XXXVII of the [Code of Civil, Procedure].[1]	Ten days ...	When the summons is served.
160. For an order under the same Code to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days ..	When the application for review is rejected.
161. For a review of judgment by a Court of Small Causes or by a Court invested with the jurisdiction of a Court of Small Causes when exercising that jurisdiction.	Fifteen days ...	The date of the decree or order.
162. For a review of judgment by the High Court in the exercise of its original jurisdiction.	Twenty days ...	The date of the decree or order.
163. By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days ...	The date of the dismissal.
164. By a defendant, for an order to set aside a decree passed *ex parte*.	Thirty days ...	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree.
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167. Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	Thirty days ...	The date of the resistance or obstruction.

[1] Substituted by Burma Act IV, 1944.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
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169. For the re-hearing of an appeal heard *ex parte*.	Thirty days ...	The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170. For leave to appeal as a pauper	Thirty days ...	The date of the decree appealed from.
171. Under the Code of Civil Procedure for an order to set aside an abatement.	Sixty days ...	The date of the abatement.
172. Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Sixty days ...	The date of the order of dismissal.
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174. For the issue of a notice under the Code of Civil Procedure to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ninety days ...	When the payment or adjustment is made.
175. For payment of the amount of a decree by instalments.	Six months ...	The date of the decree.
176. Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ninety days ...	The date of the death of the deceased plaintiff or appellant.
177. Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Ninety days ...	The date of the death of the deceased defendant or respondent.
[1]178. Under the Arbitration Act, 1944, for the filing in Court of an award.	Ninety days ...	The date of service of the notice of the making of the award.
179. By a person desiring to appeal under the [Code of Civil Procedure][1] to [the Supreme Court],[2] for leave to appeal.	Ninety days ...	The date of the decree appealed from.

[1] Substituted by Burma Act IV, 1944.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

THE FIRST SCHEDULE—*contd.*

THIRD DIVISION : APPLICATIONS—*contd.*

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182. For the execution of a decree or order of any civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure.	Three years; or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or 5. (where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution or to take some step in aid of execution of the decree or order, or 6. (in respect of any amount, recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last-mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the appellate Court or of the withdrawal of the appeal, or 7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date. *Explanation I.*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in

THE FIRST SCHEDULE—*concld.*

THIRD DIVISION : APPLICATIONS—*concld.*

Description of application.	Period of limitation.	Time from which period begins to run.
		clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all. Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all. *Explanation II.*—"Proper Court" means the Court whose duty it is to execute the decree or order.
183. To enforce a judgment, decree or order of the High Court in the exercise of its ordinary original civil jurisdiction, or an order of [the Supreme Court.][1]	Twelve years ...	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right : Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money, has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

အထူးကာလ စည်းကမ်းသတ်နှင့် အတိုးကန့်သတ်ရေးအက်ဥပဒေ။

[၁၉၅၀ ပြည့်နှစ်၊ အက်ဥပဒေအမှတ် ၁၉။] (၁၉၄၈ ခုနှစ်၊ ဩဂုတ်လ ၁၉ ရက်။)

အောက်ပါအတိုင်း အက်ဥပဒေအဖြစ်ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။ဤအက်ဥပဒေသည်၊ ၁၉၄၈ ခုနှစ်၊ ဩဂုတ်လ ၁၉ ရက်နေ့၌အာဏာတည်သည်ဟု မှတ်ယူရမည်။

၂။ ။သောင်းကျန်းသူများ၏လက်တွင်းသို့ ကျရောက်သောမည်သည့်အရပ်ဒေသတွင်မဆို၊ တရားမရုံးများသည်၊ တရားဝင်အစိုးရ၏မြို့ပြဆိုင်ရာအုပ်ချုပ်ရေးကို ခေတ္တရုပ်သိမ်းသည့်နေ့မှစ၍၊ နိုင်ငံတော်သမတက ထိုအရပ်ဒေသအတွက် အမိန့်ထုတ်ပြန်သတ်မှတ်သည့်နေ့အထိ၊ ကာလ စည်းကမ်းသတ် အက်ဥပဒေပုဒ်မ ၄ ၏အနက်အဓိပ္ပါယ်အရ၊ ပိတ်ထားသည်ဟုမှတ်ယူရမည်။

၃။ ။တည်ဆဲအခြားဥပဒေတရပ်ရပ်တွင်သော်၎င်း၊ ငွေချေးပင်္ဂျာဉ်တခုခုတွင်သော်၎င်း၊ အပေါင်စာချုပ် တခုခုတွင်သော်၎င်း မည်သို့ပင်ပါရှိစေကာမူ၊ မည်သည့်အရပ်ဒေသတွင်မဆို၊ တရားဝင်အစိုးရ၏ မြို့ပြဆိုင်ရာအုပ်ချုပ်ရေးကိုခေတ္တရုပ်သိမ်းခြင်းမပြုမီက ထုတ်ပေးသောချေးငွေ ပေါ်တွင်ဖြစ်စေ၊ ပေါင်နှံသည့်ပစ္စည်း၏အမြတ်အစွန်းကို ခံစားစေရန်ပေါင်နှံခြင်း (Usufructuary mortgage) မှတပါး၊ အခြားနည်းပေါင်နှံခြင်းပေါ်တွင်ဖြစ်စေ၊ မြို့ပြဆိုင်ရာအုပ်ချုပ်ရေးကို ခေတ္တရုပ်သိမ်းသည့်နေ့မှ၊ နိုင်ငံတော်သမတက ပုဒ်မ ၂ အရ၊ ထိုအရပ်ဒေသအတွက် သတ်မှတ်သည့်နေ့အထိ၊ ကာလအပိုင်းအခြားအတွက် အတိုးပေးဆောင်ရန် မထိုက်သင့်စေရ။

၄။ ။တည်ဆဲအခြားဥပဒေတရပ်ရပ်၏ပြဋ္ဌာန်းချက်များအနက်၊ ဤအက်ဥပဒေ၏ ပြဋ္ဌာန်းချက်တခုခုနှင့်မညီညွတ်သောပြဋ္ဌာန်းချက်သည်၊ အတည်မဖြစ်၊ ပျက်ပြယ်ရမည်။

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အပိုင်း ၂၉။ ။ သက်သေခံဥပဒေဆိုင်ရာ။

THE EVIDENCE ACT.

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THE EVIDENCE ACT.

[INDIA ACT I, 1872.] (1st September 1872.)

PART I.

Relevancy of Facts.

CHAPTER I.

PRELIMINARY.

1. This Act applies to all judicial proceedings in or before any Court, including Courts-martial, other than Courts-martial convened under [any Act relating to the Army, Navy or Air Force,] [1] but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator. Application of Act.

2. * * * *

[1] Substituted by the Union of Burma (Adaptation of Laws), Order, 1948.

Interpretation clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Court."

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact."

"Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to civil procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustration.

A is accused of the murder of *B*.

At his trial the following facts may be in issue :—

that *A* caused *B*'s death ;

that *A* intended to cause *B*'s death ;

that *A* had received grave and sudden provocation from *B* ;

that *A*, at the time of doing the act which caused *B*'s death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document."

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustration.

A writing is a document ;

Words printed, lithographed or photographed are documents ;

A map or plan is a document ;

An inscription on a metal plate or stone is a document ;

A caricature is a document.

"Evidence" means and includes— "Evidence."

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. "Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. "Disproved."

A fact is said not to be proved when it is neither proved nor disproved. "Not proved."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it. "May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. "Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. "Conclusive proof."

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others. Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

Illustrations.

(a) *A* is tried for the murder of *B* by beating him with a club with the intention of causing his death.

At *A*'s trial the following facts are in issue :—

A's beating *B* with the club ;

A's causing *B*'s death by such beating ;

A's intention to cause *B*'s death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Pocedure.

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) *A* is accused of waging war against the Government by taking part in an armed insurrection in which property is destroyed, troops are attacked, and jails are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though *A* may not have been present at all of them.

(*c*) *A* sues *B* for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from *B* were delivered to *A*. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an apportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether *A* robbed *B*.

The facts that, shortly before the robbery, *B* went to a fair with money in his possession and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether *A* murdered *B*.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether *A* poisoned *B*.

The state of *B*'s health before the symptoms ascribed to poison, and habits of *B*, known to *A*, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than

statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) *A* is tried for the murder of *B*.

The facts that *A* murdered *C*, that *B* knew that *A* had murdered *C*, and that *B* had tried to extort money from *A* by theatening to make his knowledge public, are relevant.

(*b*) *A* sues *B* upon a bond for the payment of money *B* denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, *B* required money for a particular purpose, is relevant.

(*c*) *A* is tried for the murder of *B* by poison.

The fact that, before the death of *B*, *A* procured poison similar to that which was administered to *B*, is relevant.

(*d*) The question is whether a certain document is the will of *A*.

The facts that, not long before the date of the alleged will, *A* made inquiry into matters to which the provisions of the alleged will relate, that he consulted legal practitioners in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(*e*) *A* is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, *A* provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether *A* robbed *B*.

The facts that, after *B* was robbed, *C* said in *A*'s presence "the police are coming to look for the man who robbed *B*," and that immediately afterwards *A* ran away, are relevant.

(*g*) The question is whether *A* owes *B* rupees 10,000.

The facts that *A* asked *C* to lend him money, and that *D* said to *C* in *A*'s presence and hearing "I advise you not to trust *A*, for he owes *B* 10,000 rupees," and that *A* went away without making any answer, are relevant facts.

(*h*) The question is, whether *A* committed a crime.

The fact that *A* absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) *A* is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is whether *A* was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(*k*) The question is, whether *A* was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of *A*.

The state of *A*'s property and of his family at the date of the alleged will may be relevant facts.

(*b*) *A* sues *B* for a libel imputing disgraceful conduct to *A*; *B* affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between *A* and *B* about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between *A* and *B*.

(*c*) *A* is accused of a crime.

The fact that, soon after the commission of the crime, *A* absconded from his house is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) *A* sues *B* for inducing *C* to break a contract of service made by him with *A*. *C*, on leaving *A*'s service, says to *A* "I am leaving you because *B* has made me a better offer." This statement is a relevant fact as explanatory of *C*'s conduct, which is relevant as a fact in issue.

(*e*) *A*, accused of theft, is seen to give the stolen property to *B*, who is seen to give it to *A*'s wife. *B* says as he delivers it "*A* says you are to hide this." *B*'s statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) *A* is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that *A* has joined in a conspiracy to wage war against the Government.

The facts that *B* procured arms in Europe for the purpose of the conspiracy, *C* collected money in Rangoon for a like object, *D* persuaded persons to join the conspiracy in Bassein, *E* published writings advocating the object in view at Toungoo, and *F* transmitted from Mandalay to *G* at Taunggyi the money which *C* had collected at Rangoon, and the contents of a letter written by *H* giving an account of the conspiracy, are each relevant, both to prove the

existence of the conspiracy, and to prove *A*'s complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevent fact highly probable or improbable.

Illustrations.

(*a*) The question is whether *A* committed a crime at Rangoon on a certain day.

The fact that, on that day, *A* was at Maymyo is relevant.

The fact that, near the time when the crime was committed, *A* was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether *A* committed a crime.

The circumstances are such that the crime must have been committed either by *A*, *B*, *C* or *D*. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either *B*, *C* or *D*, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(*b*) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether *A* has a right to a fishery. A deed conferring the fishery on *A*'s ancestors, a mortgage of the fishery by *A*'s father, a subsequent grant of the fishery by *A*'s father, irreconcilable with the mortgage, particular instances in which *A*'s father exercised the right, or in which the exercise of the right was stopped by *A*'s neighbours, are relevant facts.

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

[1]*Explanation 2.*—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(*a*) *A* is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*) *A* is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, *A* was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that *A* had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(*c*) *A* sues *B* for damage done by a dog of *B*'s, which *B* knew to be ferocious.

The facts that the dog had previously bitten *X*, *Y* and *Z*, and that they had made complaints to *B*, are relevant.

(*d*) The question is, whether *A*, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that *A* had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that *A* knew that the payee was a fictitious person.

(*e*) *A* is accused of defaming *B* by publishing an imputation intended to harm the reputation of *B*.

The fact of previous publications by *A* respecting *B*, showing ill-will on the part of *A* towards *B*, is relevant, as proving *A*'s intention to harm *B*'s reputation by the particular publication in question.

The facts that there was no previous quarrel between *A* and *B*, and that *A* repeated the matter complained of as he heard it, are relevant, as showing that *A* did not intend to harm the reputation of *B*.

(*f*) *A* is sued by *B* for fraudulently representing to *B* that *C* was solvent, whereby *B*, being induced to trust *C*, who was insolvent, suffered loss.

The fact that, at the time when *A* represented *C* to be solvent, *C* was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that *A* made the representation in good faith.

(*g*) *A* is sued by *B* for the price of work done by *B*, upon a house of which *A* is owner, by the order of *C*, a contractor.

A's defence is that *B*'s contract was with *C*.

The fact that *A* paid *C* for the work in question is relevant, as proving that *A* did, in good faith, make over to *C* the management of the work in question, so that *C* was in a position to contract with *B* on *C*'s own account, and not as agent for *A*.

(*h*) *A* is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

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[1] Section 311 of the Code of Criminal Procedure (Volume VIII of this Code) states that evidence of a previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Evidence Act.

The fact that public notice of the loss of the property had been given in the place where *A* was is relevant, as showing that *A* did not in good faith believe that the real owner of the Property could not be found.

The fact that *A* knew, or had reason to believe, that the notice was given fraudulently by *C*, who had heard of the loss of the property and wished to set up a false claim to it is relevant, as showing that the fact that *A* knew of the notice did not disprove *A*'s good faith.

(*i*) *A* is charged with shooting at *B* with intent to kill him. In order to show *A*'s intent the fact of *A*'s having previously shot at *B* may be proved.

(*j*) *A* is charged with sending threatening letters to *B*. Threatening letters previously sent by *A* to *B* may be proved, as showing the intention of the letters.

(*k*) The question is whether *A* has been guilty of cruelty towards *B*, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is whether *A*'s death was caused by poison.

Statements made by *A* during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of *A*'s health at the time an assurance on his life was effected,

Statements made by *A* as to the state of his health at or near the time in question are relevant facts.

(*n*) *A* sues *B* for negligence in providing him with a carriage for hire not reasonably fit for use, whereby *A* was injured.

The fact that *B*'s attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that *B* was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) *A* is tried for the murder of *B* by intentionally shooting him dead.

The fact that *A* on other occasions shot at *B* is relevant as showing his intention to shoot *B*.

The fact that *A* was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) *A* is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

(*a*) *A* is accused of burning down his house in order to obtain money for which it is insured.

The facts that *A* lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires *A* received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) *A* is employed to receive money from the debtors of *B*. It is *A*'s duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by *A* in the same book are false, and that the false entry in each case in favour of *A*, are relevant.

(*c*) *A* is accused of fraudulently delivering to *B* a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to *B*, *A* delivered counterfeit rupees to *C*, *D* and *E* are relevant, as showing that the delivery to *B* was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b*) The question is, whether a particular letter reached *A*. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission by party to proceeding or his agent;

18. Statements made by a party to the proceeding or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter;

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by person from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A undertakes to collect rents for *B*.

B sues *A* for not collecting rent due from *C* to *B*.

A denies that rent was due from *C* to *B*.

A statement by *C* that he owed *B* rent is an admission, and is a relevant fact as against *A*, if *A* denies that *C* did owe rent to *B*.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions. Admissions by persons expressly referred to by party to suit.

Illustration.

The question is whether a horse sold by *A* to *B* is sound.

A says to *B* "Go and ask *C*; *C* knows all about it." *C*'s statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:— Proof of admissions against persons making them, and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between *A* and *B* is, whether a certain deed is or is not forged. *A* affirms that it is genuine, *B* that it is forged.

A may prove a statement by *B* that the deed is genuine, and *B* may prove a statement by *A* that the deed is forged; but *A* cannot prove a statement by himself that the deed is genuine, nor can *B* prove a statement by himself that the deed is forged.

(*b*) *A*, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. *A* may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) *A* is accused of a crime committed by him at Rangoon.

He produces a letter written by himself and dated at Maymyo on that day, and bearing the Maymyo post-mark of that day.

The statement in the date of the letter is admissible, because, if *A* were dead, it would be admissible under section 32, clause (2).

(*d*) *A* is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) *A* is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *illustration*.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any legal practitioner from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise [1] having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence :

[2][Provided that this section shall not apply to confessions made to a headman or a rural policeman appointed under the Village Act.]

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section "Magistrate" does not include the head of a village discharging magisterial functions, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

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[1] For prohibition of such inducements, etc, see section 343 of the Code of Criminal Procedure (Volume VIII of this Code).

[2] This proviso was substituted for the original proviso by Burma Act XVII, 1945.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

Illustrations.

(*a*) *A* and *B* are jointly tried for the murder of *C*. It is proved that *A* said "*B* and I murdered *C*." The Court may consider the effect of this confession as against *B*.

(*b*) *A* is on his trial for the murder of *C*. There is evidence to show that *C* was murdered by *A* and *B*, and that *B* said "*A* and I murdered *C*."

This statement may not be taken into consideration by the Court against *A*, as *B* is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

Statements by Persons who cannot be called as Witnesses.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :—

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4) When the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons and expresses feelings relevant to matter in question.

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether *A* was murdered by *B*; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by *B*; or

The question is whether *A* was killed by *B* under such circumstances that a suit would lie against *B* by *A*'s widow.

Statements made by *A* as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(*b*) The question is as to the date of *A*'s birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended *A*'s mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether *A* was in Rangoon on a given day.

A statement in the diary of a deceased advocate, regularly kept in the course of business, that on a given day the advocate attended *A* at a place mentioned, in Rangoon, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Rangoon on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Rangoon, is a relevant fact.

(*e*) The question is, whether rent was paid to *A* for certain land.

A letter from *A*'s deceased agent to *A*, saying that he had received the rent on *A*'s account and held it at *A*'s orders, is a relevant fact.

(*f*) The question is, whether *A* and *B* were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(*g*) The question is, whether *A*, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by *A*, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased trader in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether *A*, who is dead, was the father of *B*.

A statement by *A* that *B* was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of *A*.

A letter from *A*'s deceased father to a friend, announcing the birth of *A* on a given day, is a relevant fact.

(*m*) The question is, whether, and when, *A* and *B* were married.

An entry in a memorandum-book by *C*, the deceased father of *B*, of his daughter's marriage with *A* on a given date, is a relevant fact.

(*n*) *A* sues *B* for a libel expressed in a painted caricature exposed in a shop window The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided that the proceeding was between the same parties or their representatives in interest ; that the adverse party in the first proceeding had the right and

opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under Special Circumstances.

Entries in books of account when relevant.

34. [1] Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues *B* for Rs. 1,000, and shows entries in his account books showing *B* to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence, to prove the debt.

Relevancy of entry in public record made in performance of duty.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2], or in any enactment in force at any time in the Union of Burma or India or Pakistan, or in a notification of the Government appearing in the Gazette, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the [British Crown,] [2] is a relevant fact.

Relevancy of statements as to any law contained in law-books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

[1] *Cf.* section 240 of the Burma Companies Act (Volume IX of this Code) and Order VII, rule 17, of the Code of Civil Procedure (*ante*). As to the admissibility in evidence of certified copies of entries in bankers' books, *see* section 4 of the Bankers' Books Evidence Act (*post*).

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

How much of a Statement is to be proved.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice when relevant.

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in probate, etc., jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues *B* for trespass on his land. *B* alleges the existence of a public right of way over the land, which *A* denies.

The existence of a decree in favour of the defendant, in a suit by *A* against *C* for a trespass on the same land, in which *C* alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) *A* and *B* separately sue *C* for a libel which reflects upon each of them. *C* in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against *C* for damages on the ground that *C* failed to make out his justification. The fact is irrelevant as between *B* and *C*.

(*b*) *A* prosecutes *B* for adultery with *C*, *A*'s wife.

B denies that *C* is *A*'s wife, but the Court convicts *B* of adultery.

Afterwards, *C* is prosecuted for bigamy in marrying *B* during *A*'s lifetime. *C* says that she never was *A*'s wife.

The judgment against *B* is irrelevant as against *C*.

(*c*) *A* prosecutes *B* for stealing a cow from him. *B* is convicted.

A afterwards sues *C* for the cow, which *B* had sold to him before his conviction. As between *A* and *C*, the judgment against *B* is irrelevant.

(*d*) *A* has obtained a decree for the possession of land against *B*. *C*, *B*'s son, murders *A* in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(*e*) *A* is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*f*) *A* is tried for the murder of *B*. The fact that *B* prosecuted *A* for libel and that *A* was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment, or incompetency of Court may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinions of Third Persons, when relevant.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of *A* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died are relevant.

(*b*) The question is, whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by *A* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*) The question is, whether *A* was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of *A*, a merchant in London.

B is a merchant in Rangoon, who has written letters addressed to *A* and received letters purporting to be written by him. *C* is *B*'s clerk, whose duty it was to examine and file *B*'s correspondence. *D* is *B*'s broker, to whom *B* habitually submitted the letters purporting to be written by *A* for the purpose of advising him thereon.

The opinions of *B*, *C* and *D* on the question whether the letter is in the handwriting of *A* are relevant, though neither *B*, *C* nor *D* ever saw *A* write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

Opinion on relationship, when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Burma Divorce Act, or in prosecutions under section 494, 495, 497 or 498 of the Penal Code.

Illustrations.

(*a*) The question is, whether *A* and *B* were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*) The question is, whether *A* was the legitimate son of *B*. The fact that *A* was always treated as such by members of the family is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character, when relevant.

In civil cases, character to prove conduct imputed irrelevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant. Character as affecting damages.

Explanation.—In sections 52, 53, 54, and 55, the word "character" includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

On Proof

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

56. No fact of which the Court will take judicial notice need be proved. Fact judicially noticeable need not be proved.

57. The Court shall take judicial notice of the following facts:— Facts of which Court must take judicial notice.

(1) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of the Union of Burma or India or Pakistan;

(2) all public Acts passed or hereafter to be passed by [Parliament of the United Kingdom of Great Britain and Ireland],[1] and all local and personal Acts directed by [Parliament of the United Kingdom of Great Britain and Ireland][1] to be judicially noticed;

(3) Articles of War for His Britannic Majesty's Army, Navy or Air Force;

(4) the course of proceeding of [Parliament of the United Kingdom of Great Britain and Ireland][1] and of the Union Parliament;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) all seals of which English Courts take judicial notice; the seals of all the Courts of the Union of Burma; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public; and all seals which any person is authorized to use by any Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] or other enactment in force in the Union of Burma;

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of the Union of Burma, if the fact of their appointment to such office is notified in the Gazette;

(8) the existence, title and national flag of every State or Sovereign recognized by [the President of the Union];[1]

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Gazette;

(10) the territories under the dominion of the British Government;

(11) the commencement, continuance and termination of hostilities between [the Union of Burma][1] and any other State or body of persons;

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all legal practitioners and other persons authorized by law to appear or act before it;

(13) the rule of the road on land or at sea.

In all these cases[2] and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Section 84 (2) of the Code of Civil Procedure (*ante*) states that every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by the President of the Union.

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;[1]

(2) copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

[1] *See* section 76, *post*.

(4) counterparts of documents as against the parties who did not execute them ;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases :—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it ;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(*d*) when the original is of such a nature as not to be easily moveable ;

(*e*) when the original is a public document within the meaning of section 74 ;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in the Union of Burma, to be given in evidence ;

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1) when the document to be proved is itself a notice;
(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;
(4) when the adverse party or his agent has the original in Court ;
(5) when the adverse party or his agent has admitted the loss of the document;
(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered unless its execution by the person by whom it purports to have been executed is specifically denied.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

Public Documents.

Public documents.

74. The following documents are public documents :—

(1) documents forming the Acts or records of the Acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of the Union of Burma [* * * *][1] or of a foreign country ;

(2) public records kept in the Union of Burma of private documents.

Private documents.

75. All other documents are private.

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1) Acts, orders or notifications of the Government,—

by the records of the departments, certified by the heads of those departments respectively, or by any document purporting to be printed by order of the President of the Union ;

(2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the President of the Union ;

(3) proclamations, orders or regulations issued by His Britannic Majesty or by the Privy Council, or by any department of His Britannic Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the [official Printer] ;[1]

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some enactment in force in the Union of Burma ;

(5) the proceedings of a municipal body in the Union of Burma,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body ;

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948

(6) public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or [diplomatic agent or the diplomatic agent for the Union],[1] that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in the Union of Burma, [or by any officer in any other part of the Union of Burma who is duly authorized thereto by the President of the Union],[2] to be genuine :

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of the Union of Burma, or the Government Gazette of any colony, dependency or possession of the British Government, or to be a newspaper or journal, or to be a copy of a private Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] printed by the [official Printer],[1] and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] The words in brackets should have been omitted.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of [His Britannic Majesty or the Union of Burma],[1] was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of [His Britannic Majesty's dominions or the Union of Burma][1] is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of [His Britannic Majesty or the Union of Burma][1] in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) *A* has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) *A* produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) *A*, a connection of *B*, produces deeds relating to lands in *B*'s possession which were deposited with him by *B* for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence[1] shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills may be proved by any probate thereof having effect in the Union of Burma.

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[1] Where, however, a criminal Court finds that the confession or other statement of an accused person has not been recorded in the manner prescribed, evidence may be taken that the recorded statement was duly made, and notwithstanding anything contained in this section such statement shall be admitted if the error has not injured the accused as to his defence on the merits; *see* section 533 of the Code of Criminal Procedure (Volume VIII of this Code).

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) *A* contracts, in writing, with *B*, for the delivery of indigo upon certain terms. The contract mentions the fact that *B* had paid *A* the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible

(*e*) *A* gives *B* a receipt for money paid by *B*.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a) A policy of insurance is effected on goods "in ships from Rangoon to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) *A* agrees absolutely in writing to pay *B* Rs. 1,000 on the first March, 1940. The fact that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Kalaw tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with *B* to work certain mines, the property of *B*, upon certain terms. *A* was induced to do so by a misrepresentation of *B*'s as to their value. This fact may be proved.

(e) *A* institutes a suit against *B* for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. *A* may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) *A* orders goods of *B* by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. *B* sues *A* for the price. *A* may show that the goods were supplied on credit for a term still unexpired.

(g) *A* sells *B* a horse and verbally warrants him sound. *A* gives *B* a paper in these words: "Bought of *A* a horse for Rs. 500." *B* may prove the verbal warranty.

(h) *A* hires lodgings of *B*, and gives a card on which is written "Rooms, Rs. 200 a month." *A* may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of *B* for a year, and a regularly stamped agreement, drawn up by a lawyer, is made between them. It is silent on the subject of board. *A* may not prove that board was included in the term verbally.

(i) *A* applies to *B* for a debt due to *A* by sending a receipt for the money. *B* keeps the receipt and does not send the money. In a suit for the amount *A* may prove this.

(j) *A* and *B* make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with *B*, who sues *A* upon it. *A* may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(a) *A* agrees, in writing, to sell a horse to *B* for Rs. 1,000 or Rs. 1,500.

Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts. Exclusion of evidence against application of document to existing facts.

Illustration.

A sells to *B*, by deed, "my estate at Tavoy containing 100 acres." *A* has an estate at Tavoy containing 100 acres. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. Evidence as to document unmeaning in reference to existing facts.

Illustration.

A sells to *B*, by deed, "my house in Rangoon."

A had no house in Rangoon, but it appears that he had a house at Insein, of which *B* had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Insein.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things evidence may be given of facts which show which of those persons or things it was intended to apply to. Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(*a*) *A* agrees to sell to *B*, for Rs. 1,000, "my white horse." *A* has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) *A* agrees to accompany *B* to Tantabin. Evidence may be given of facts showing which Tantabin was meant.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

A agrees to sell to *B* "my land at X in the occupation of *Y*." *A* has land at X, but not in the occupation of *Y*, and he has land in the occupation of *Y*, but it is not at X. Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense. Evidence as to meaning of illegible characters, etc.

Illustration.

A, a sculptor, agrees to sell to *B*, "all my mods." *A* has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document, or their respresentatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document. Who may give evidence of agreemen varying terms of document.

Illustration.

A and *B* make a contract in writing that *B* shall sell *A* certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to *A*. This could not be shown as between *A* and *B*, but it might be shown by *C*, if it affected his interests.

Saving of provisions of Succession Act relating to wills.

100. Nothing in this Chaper contained shall be taken to affect any of the provisions of the Succession Act as to the construction of wills.

PART III.

Production and Effect of Evidence.

CHAPTER VII.

Of the Burden of Proof.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) *A* desires a Court to give judgment that *B* shall be punished for a crime which *A* says *B* has committed.

A must prove that *B* has committed the crime.

(*b*) *A* desires a Court to give judgment that he is entitled to certain land in the possession of *B*, by reason of facts which he asserts, and which *B* denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) *A* sues *B* for land of which *B* is in possession, and which, as *A* asserts, was left to *A* by the will of *C*, *B*'s father.

If no evidence were given on either side, *B* would be entitled to retain his possession.

Therefore the burden of proof is on *A*.

(*b*) *A* sues *B* for money due on a bond.

The execution of the bond is admitted, but *B* says that it was obtained by fraud, which *A* denies.

If no evidence were given on either side, *A* would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on *B*.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes *B* for theft, and wishes the Court to believe that *B* admitted the theft to *C*. *A* must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) *A* wishes to prove a dying declaration by *B*. *A* must prove *B*'s death.

(*b*) *A* wishes to prove, by secondary evidence, the contents of a lost document. *A* must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*) *A*, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on *A*.

(*b*) *A*, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on *A*.

(*c*) Section 325 of the Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on *A*.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) *A* is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to a legal practitioner is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the legal practitioner.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. * * * *

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) that a thing or state of things, which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

as to *illustration* (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to *illustration* (*b*)—*A*, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. *B*, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of *A* and himself;

as to *illustration* (*b*)—a crime is committed by several persons. *A*, *B* and *C*, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating *D*, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to *illustration* (*c*)—*A*, the drawer of a bill of exchange, was a man of business. *B*, the acceptor, was a young and ignorant person, completely under *A*'s influence;

as to *illustration* (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to *illustration* (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to *illustration* (*f*)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to *illustration* (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to *illustration* (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to *illustration* (*i*) a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads *B* to believe that certain land belongs to *A* and thereby induces *B* to buy and pay for it.

The land afterwards becomes the property of *A*, and *A* seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant; and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation (*1*).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (*2*).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit and their wives or husbands. Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustration.

(*a*) *A*, on his trial before the Court of Session, says that a deposition was improperly taken by *B*, the Magistrate. *B* cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) *A* is accused before the Court of Session of having given false evidence before *B*, a Magistrate. *B* cannot be asked what *A* said, except upon the special order of a superior Court.

(*c*) *A* is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before *B*, a Sessions Judge. *B* may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married ; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—" Revenue-officer " in this section means any officer employed in or about the business of any branch of the public revenue.

Professional communications.

126. No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal purpose ;

(2) any fact observed by any legal practitioner, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) *A*, a client, says to *B*, a legal practitioner, "I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) *A*, a client, says to *B*, a legal practitioner, "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) *A*, being charged with embezzlement, retains *B*, a legal practitioner to defend him. In the course of the proceedings, *B* observes that an entry has been made in *A*'s account book, charging *A* with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by *B* in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of legal practitioners.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126 ; and, if any party to a suit or proceeding calls any such legal practitioner as a witness, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title-deeds of witness not a party.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person, having possession, could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind : Witness not excused from answering on ground that answer will criminate.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. Proviso.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact. Number of witnesses.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court. Order of production and examination of witnesses.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise. Judge to decide as to admissibility of evidence.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) *A* is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (*A*) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (*B*, *C* and *D*) which must be shown to exist before the fact (*A*) can be regarded as the cause or effect of the fact in issue. The Court may either permit *A* to be proved before *B*, *C* and *D* are proved, or may require proof of *B*, *C* and *D* before permitting proof of *A*.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether *A* assaulted *B*.

C deposes that he heard *A* say to *D* "*B* wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing *A*'s motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

[1]**145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect

[1] As to the application of section 145 to police-diaries, *see* section 172 of the Code of Criminal Procedure (Volume VIII of this Code).

the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by his client that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(*b*) A pleader is informed by a person in Court that an important witness is a dacoit. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any legal practitioner, report the circumstances of the case to the High Court or other authority to which such legal practitioner is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but,

if he answers falsely, he may afterwards be charged with giving false evidence. questions testing veracity.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) *A* affirms that on a certain day he saw *B* at Mandalay.

A is asked whether he himself was not on that day at Rangoon. He denies it.

Evidence is offered to show that *A* was on that day at Rangoon.

The evidence is admissible, not as contradicting *A* on a fact which affects his credit, but as contradicting the alleged fact that *B* was seen on the day in question in Mandalay.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) *A* is asked whether his family has not had a bloodfeud with the family of *B* against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Question by party to his own witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :— Impeaching credit of witness.

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) *A* sues *B* for the price of goods sold and delivered to *B*. *C* says that *A* delivered the goods to *B*.

Evidence is offered to show that, on a previous occasion, he said that *A* had not delivered the goods to *B*.

The evidence is admissible.

(*b*) *A* is indicted for the murder of *B*.

C says that *B*, when dying, declared that *A* had given *B* the wound of which he died.

Evidence is offered to show that, on a previous occasion, *C* said that the wound was not given by *A* or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

THE OATHS ACT.

[INDIA ACT X, 1873.] (8th April, 1873.)

I.—PRELIMINARY.

[1]1. * * * *

2. * * * *

3. Nothing herein contained applies to proceedings before Courts-martial, or to oaths, affirmations or declarations prescribed by or under [any other law.][2] Saving of certain oaths and affirmations.

II.—AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law :— Authority to administer oaths and affirmations.

(*a*) all Courts and persons having by law or consent of parties authority to receive evidence ;

(*b*) the Commanding Officer of any military, naval or air force station or ship occupied by troops in the service of [the Government :][2]

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and,

(2) that the oath or affirmation be such as a Magistrate is competent to administer in the Union of Burma.

III.—PERSONS BY WHOM OATHS OR AFFIRMATIONS MUST BE MADE.

5. Oaths or affirmations shall be made by the following persons :— Oaths or affirmations to be made by—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence ; witnesses ;

(*b*) interpreters of questions put to, and evidence given by, witnesses ; and interpreters ;

(*c*) jurors. jurors.

Nothing herein contained shall render it [* * * *][3] necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Substituted *ibid.*

[3] The words "lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or" were deleted by Act XVII, 1945.

Affirmation by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—FORMS OF OATHS AND AFFIRMATIONS.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe. [1]

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceedings, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—MISCELLANEOUS.

Proceedings and evidence not invalidated by omission of oath

13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or

[1] *See* the High Court Rules and Orders.

render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth. or irregularity.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.[1] Persons giving evidence bound to state the truth.

15. The Penal Code, sections 178 and 181, shall be construed as if, after the word "oath", the words "or affirmation" were inserted. Amendment of Penal Code, sections 178 and 181.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever. Official oaths abolished.

[1] *Cf.*, section 191 of the Penal Code (Volume VIII of this Code)

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