

Code of Civil Procedure, 1908

¹ACT NO V. OF 1908

[21st March 1908]

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

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

PRELIMINARY

¹ For statement of Objects and Reasons, see Gazette of India, 1907 Pt.V.p.179; for Report of the Selection Committee, see *ibid.*, 1908, Pt.V., p. 35; and for Proceedings in Council, see *ibid.*, 1907, Pt. VI. P. 135 and *ibid.*, 1908, pp.8, 12 and 212.

All reference in the Act to his Majesty in Council shall be construed as references to the federal Court, see the Federal Court (Enlargement of Jurisdiction) Act, 1949 (1 of 1950), s.6.

The Act has been extended and shall be deemed to have been so extended on the 14th October, 1955, to the whole of Pakistan by the Central Laws (Statute Reforms) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch.

This Act has been amended in the Punjab by the Punjab Relief of Indebtedness Act, 1934 (Punjab 7 of 1934), Pt. VIII.

It has been extended by notification under ss.5 and FA of the Scheduled District Act, 1874 (14 of 1874), to the following scheduled Districts:-

- (1) The Province of Sindh: Bombay Government Gazette, Extraordinary, 1909, Pt. I and Gazette of India, 1909, Pt. I, p.32.
- (2) Scheduled District in the Punjab: Gazette, of India, 1909, Pt. I, P. 33.
- (3) The District of Peshawar, Hazara, Kohat, Bannu and Dera Ismail Khan composing the N.W.F.P. : *ibid.*, Pt. II, p. 80.

It has been declared to be in force in Balochistan by the British Balochistan Laws Regulation, 1913 (2 of 1913), s. 3 and First Schedule.

It has also been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1930 (G.G.O.3 of 1950); and applied in the Federated Areas of Balochistan, see GAZ. Of India 1937, pt. I, p. 1499.

It has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W.F.P (Upper Tanwal) (Excluded Area) Laws Regulation, 1950.

It has also been extended to the Excluded Area of Upper Tanawal other than Phulera by the N.W.F.P. (Upper Tanwal) Excluded Area) Laws Regulation, 1950 and declared to be in force in that area with effect from the 1st June, 1951, see N.W.F.P Gazette, Extra Ordinary, dated the 1st June, 1951.

The Act has with certain modification been applied to the Provincially Administered Tribal Areas of Gilgit, Dir, Kala, Swat and Malakand Protected Area by NWFP. Regulation NO. 1 of 1974.

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

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

¹[(3) It extends to the whole of Pakistan.]

2.Definition. 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 which 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 ²[the determination of any question within section 144 and an order under rule 60, 98, 99, 101, or 103 of Order XXI but shall not include;

(a) any adjudication form 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 dispose of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

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

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

(5) "Foreign Court" means a Court situate beyond the limits of ³[Pakistan] which has no authority in ³[Pakistan] is not established or continued by ⁴[the ⁵[Federal Government] ⁶* * *] ;

¹ Subs. by the Central Laws (Statute Refroms) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect t from the 14th October, 1955), for the Original sub-section (3), as amended by A.O., 1949.

² Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 ad Sch., for "and the determination of any question within section 47 or section 144".

³ Subs. by Ord. 21 of 1960., s.3 and 2nd Sch. (with ffect from the 14th October, 1955), for "the Provinces and the Capital of the Federation: which had been subs. by A.O., 1949, for "British India".

⁴Subs. by A.O., 1937, for "the G.G in C.".

⁵Subs. by F.A.O., 1975 Art. 2 and Table, for "Central Government"

⁶The Words " or the Crown Representative" omitted by A.O., 1949.

- (6) "Foreign judgment" means the judgment of a foreign Court:
- (7) "Government Pleader" Includes any officer appointed by the ¹[Provincial Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :
- (8) "Judge" means the presiding officer of a civil Court:
- (9) "Judgment" means the statement given by the Judge of the grounds of a decree or order:
- (10) "Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:
- (11) "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:
- (12) "Mesne 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) "Movable property" includes growing crops:
- (14) "Order" means the formal expression of any decision of a civil Court which is not a decree:
- (15) "Pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a civil and an attorney of a High Court:
- (16) "Prescribed" means prescribed by rules:
- (17) "Public officer" means a person falling under any of the following descriptions, namely:
 - (a) every Judge;

¹ Subs. by A.O., 1937, for "L.G.".

¹[(b) Every person in the service of Pakistan.

(c) Every commissioned or gazetted officer in the military, ²[naval or air forces of ³[Pakistan while in the service of the State;

(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 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 interest of 1[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 or section 125.

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

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

3. Subordination of Courts: 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.

¹ Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch., for sub-clause (b). the words in crotchets (Civil Service of Paksitan which were amended by Ordinance 21 of 1960, s. 3 and 2nd and A.O., 1949.

² Subs. by the Amending Act, 1934 (35 of 1934), s.2 and Sch., for "or navail".

³ The words "His Majesty while serving under the Crown" as amended, by Act, 35 of 1934, s.2 and Sch. And A.O., 1937 have been subs. by A.O., 1961, Art, 2 and Sch. (with effect from the 23rd March, 1956.)

4. Savings:- (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 subsection (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

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

(2) "Revenue Court" in subsection (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.

6. Pecuniary Jurisdiction: 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.

7. Provincial Small Cause Courts: The following provisions shall not extend to Courts constituted by the Provincial Small Cause Courts Act, 1887,⁵ * * * or to Courts exercising the jurisdiction of a Court of Small Causes Courts ⁶[under the said Act], that is to say,-

¹ Subs. by A.O., 1937, for "L.G.".

² The words "with the previous sanction of the G.G. in C." omitted by the Devolution Act, 1920 (38 of 1920), s.2 and 1st Sch., Pt. I.

³ Subs. by A.O., 1937, for "local official Gazette".

⁴ The words "with the sanction aforesaid" omitted by act 38 of 1920, s.2 and 1st Sch., Pt. I.

⁵ The words and figures "or under the Berar Small Cause Courts Law 1905" which were ins. by the Berar Laws Act, 1941 (4 of 1941), s.2 and 2nd Sch., have been omitted by A.O., 1949.

⁶ The original words "under that Act" were first subs. by Act 4 of 1941, s.2 and 2nd Sch., and then amended by A.O., 1949, to read as above.

(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 immovable property; and

(b) The following sections, that is to say,-

sections 9,

sections 91 and 92.

sections 94 and 95 ¹[so far as they authorize or relate to:

(i) orders for the attachment of immovable property,

(ii) injunctions.

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

(iv) the interlocutory orders referred to in clause (e) of

section 94 and

sections 96 to 112 and 115.

8.Presidency Small Cause Courts:- Omitted by the A.O, 1949.

PART I

SUITS IN GENERAL

JURISDICTION OF THE COURTS AND Res Judicata

9. Courts to try all civil suits unless barred: 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.

¹ Subs. by the Small Cause Courts (Attachment of Immoveable Property) act, 1926 (1 of 1926), s.3, for "so far as they related to injunctions and interlocutory orders".

10. Stay of suit: 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 ¹[Pakistan] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Pakistan established or continued by ²[the ³[Federal Government] ⁴* * *] and having like jurisdiction, or before ⁵[the Supreme Court].

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

11. Res Judicata: No Court shall try 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.

¹ Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

² Subs. by A.O., 1937, for "the G.G in C."

³ Subs. by F.A.O., 1975. Art.2 and Table, for "Central Government"

⁴ The words "or the Crown Representative" omitted by A.O., 1949.

⁵ Subs. by A.O., 1961, Art. 2 and sch. (With effect from the 22nd March 1956), for "His Majesty in Council".

Explanation VI.-Where persons litigate bona 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 person so litigating.

¹**[12. Ban to further suits:** (1) 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.

²[(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.]

13. When foreign judgment not conclusive: A foreign judgment shall be conclusive as to any matter when 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 recognize the law of Pakistan 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 ³[Pakistan].

14. Presumption as to foreign judgment: 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 SUITS

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

16. Suits to be instituted where subject-matter situate: Subject to the pecuniary or other limitations prescribed by any law, suits;

¹ S.12 was renumbered as sub-section (1) of that section by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s.2

² Sub-section (2) added *ibid*.

³ Sbus. By the Central Laws (statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

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

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated, or, in the case of suits referred to in- clause (c), at, at the place where the cause of action his wholly or partly arisen: -

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable 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 ¹[or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen 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 ²[Pakistan].

17. Suits for immovable property situate within jurisdiction of different Courts:

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

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

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

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 subs section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to

¹ Ins. by the Code of Civil Procedure (Amdt.) Ordinance, 1962 (44 of 1962), s.6.

² Subs. by the Central Laws (Statute Reform) ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

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 consequent failure of justice.

19. Suits for compensation for wrongs to person or movables: Where a suit is for compensation for wrong done to the person or to movable 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 ¹[Karachi], beats B in ²[Quetta]. B may sue A either in Quetta or ¹[Karachi].
- (b) A, residing in ¹[Karachi] published in ²[Quetta] statements defamatory of B. B may sue A either in Quetta or in Karachi.

20. Suits to be instituted where defendants reside or cause of action arises: 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
- (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 of the Court is given, or the defendants who reside, or carry on business, or personally work as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

¹ Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "Delhi".

² Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and 2nd Sch., for "Dacca" which had been subs. by Ord. 21 of 1960. s.3 and 2nd Sch., for "Calcutt".

Explanation I.- Where a person has- a one place and also a temporary residence shall be deemed to reside at both places in action arising at the place where he residence.

Explanation II.-A corporation shall be deemed to carry on business at its sole or principal office in ¹[Pakistan] 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 ²[Lahore] B carries on business in ³[Karachi] B, by his agent in Lahore, buys goods of A and requests A to deliver them to the ⁴[Pakistan International Airways]. A delivers the goods accordingly in Lahore A may sue B for the price of the goods either in Lahore where the cause of action has arisen or in Karachi where B carries on business.

(b) A resides at ⁵[Murree], B at Lahore, and C at Karachi A, B and C being together at ⁶[Bahawalpur,] B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Bahawalpur, where the cause of action arose. He may also sue them at Lahore, where B resides, or at Karachi, 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.

21. Objections to jurisdiction: 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.

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

23. To what Court application lies: (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.

¹ Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

² Subs. by the Federal laws (Revision and Declaration) Ordinance, 1981 (27 of 1981) s. 3 and Second Sch, for "Dacca" which had been subs. by Ord., 21 of 1960, s.3 and 2nd Sch., for Calcutta".

³ Subs. *ibid.*, (with effect from the 14th October, 1955), for "Delhi".

⁴ Subs. *ibid.* (with effect from the 14th October, 1955), for "East India Railway Company".

⁵ Subs. *ibid.* (with effect from the 14th October, 1955), for "Simla".

⁶ Subs. *ibid.* (with effect from the 14th October, 1955), for "Benars".

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

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

24. General power of transfer and with drawl:- (1) On the application of any of the parties and after notice to the parties and after hearing such of 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 subordinate to it and competent 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 subsection (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, and Assistant Judges shall be deemed to District Court.

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

¹[24-A. Appearance of parties on transfer of suits:- (1) Where any suit is transferred under section 22, or any suit, appeal or other proceeding is transferred or withdrawn under subsection (1) of section 24 on the application of a party, the Court ordering the transfer or withdrawal shall fix a date for the appearance of the parties before itself, if the., suit, appeal or other proceeding is to be tried or disposed of by itself, or before the Court to which the case is so transferred.

(2) Where any suit, appeal or other proceeding is transferred from one Court to another, otherwise than on the application of a party, the parties thereto shall appear before the Court from which the suit, appeal or other proceeding is to be transferred, on the day already fixed for their appearance before that Court, and such Court shall then communicate the order of transfer to such parties and direct them to appear before the Court to which the suit, appeal or other proceeding is

¹ S.24A ins. by the Code of Civil Procedure (Amdt.), Ordinance, 1962 (44 of 1962), s.7.

to be transferred, either on the same day, or on such earliest day as may be reasonable having regard to the distance at which the other Court is located."

¹**25. Power or Provincial Government to transfer suits.] Omitted by the Central Laws (Statute Reforms) Ordinance, 1960 (XXI of 1960), s.3 Sch (with effect from the 14th October, 1955)**

INSTITUTION OF SUITS

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

SUMMONS AND DISCOVERY

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

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

(2) The Court to which summons is sent shall, upon another 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.

²**29. Service of foreign summonses:** Summonses ²[and other processes] issued by any Civil or

¹ S. 25 was amended by A.O., 1937.

² Provisions of s.29 have been applied to—

- (i) the Civil Courts in the Federation of Malaya in so far as the Chief Commissioner's Province of Baluchistan and the Capital of the Federation are concerned, see Gaz. Of P., 1949, Pt.I, P.258 and *ibid.*, Pt. HA, P. 68
- (ii) all Civil and Revenue Courts of India; and service by any Civil or Revenue Court of India of any summons issued under the Code of Civil Procedure, 1908, by a Court of the Province of Sind shall be deemed to be valid, see Sind government Gazette, Extraordinary, dated 3rd July, 1952, Pt. I, P. 437.
- (iii) All Civil and Revenue Courts in India and Service by such Courts of any summons issued under the said Code by a Court in the NWFP, Baluchistan or Karachi shall be deemed to be valid service, see NWFP Government Gazette, 1952, Pt. I, P. 248 and Gaz. Of P. 1952, Pt. I, P. 119 and *ibid.*, Pt. VI, p. 126.
- (iv) All Civil and Revenue Courts in India; and that service by such Courts of any summons issued under the said Code by a Court in Khairpur State shall be deemed to be valid service, see Khairpur State Gazette, Ext. 1952, dated the 18th September, 1952.
- (v) All Civil and Revenue Courts in India; and service by such Courts of any summons issued under the said Code by a Court in the Bahawalpur State shall be deemed to be valid service, see Bahawalpur Govt. Gazette dated the 2nd October, 1952.
- (vi) All Civil and Revenue Courts of India; and service by any civil or Revenue Court in India, within whose jurisdiction the person to be served resides of any summons issued by a Court under the said Code shall be deemed to be valid service, see Punjab Gazette, Ext. 1951, dated the 1st September, 1951, p. 1743.
- (vii) All Civil and Revenue Courts in the Union of Burma, in respect Of Baluchistan; and service by such Courts of any summons issued under the said Code by a Court in Baluchistan shall be deemed to be valid service see Gaz. Of P., Ext. 1954, P. 1873.

(viii) all Civil and Revenue Courts in the Union of Burma, in respect of Karachi; and service by such court of any summons issued under the said Code by a Court in Karachi shall be deemed to be valid service, see Gaz. Of P., Extra., 1954, P. 1997.

(ix) all civil and Revenue Courts of the Union of Buram; and service by such Courts of Sumoons issued under the said Code by A Court in East Bengal shall be deemed to be valid service, see Dacca Gazette, Ext., dated 18th October, 1954, Pt. I, P. 3053.

(x) all Civil and Revenue Courts of the Union of Burma; and service by such Courts of any summons issued under the said Code by a Court in the NWFP, shall be deemed to be valid service, see NWFP, Gazette, 1954, Pt. I, P. 523.

(xi) all Civil and Revenue Courts of the Union of Burma; and service by such Courts of any summons issued under the said Code by a Court in the Province of Punjab, shall be deemed to be valid service, see Gaz. Of Punjab, 1954, Pt. I, P. 843.

(xii) all Civil and Revenue Courts in the Federal Republic of Germany; and service by such Courts of summons issued under the said Code by a Court in Baluchistan shall be deemed to be valid service, see Gaz. Of P. 1955, Pt. I p. 126.

(xiii) all Civil and Revenue Courts in the Federal Republic of Germany; and service by such Courts of summons issued under the said Code by a Court in Baluchistan shall be deemed to be valid service, see Gaz of P. 1955, pt. I, p. 126.

(xiv) the summonses issued by any Civil or Revenue Courts by Pakistan may be sent to the Courts in the Union of Burma and served as if they had been issued by such Courts, see Gaz of 1955, P.I, P. 143.

(xv) service by any Court situated in Pakistan, of any summons issued by a Court of the Union of Burma shall be deemed to be valid service, see Gaz. Of P., 1955, Pt. I, P. 143

(xvi) all Civil and Revenue Courts in the Federal Republic of Germany and services by Such Courts of any summons issued under the said Code by a Court in Karachi, shall be deemed to be valid service, with effect on and from the 1st June, 1955, see Gaz. Of P. 1955, Pt. VI, p. 102.

(xvii) all Civil and Revenue Courts in the Federal Republic of Germany; and service by such Courts of any summons issued under the said Code by a Court in the Province of East Bengal shall be deemed to be valid service see Dacca Gazette, 1955, Pt. I, P. 1051.

(xviii) all Civil Court in Switzerland and the service by such Courts of any summons issued under the Code (C.Pr.C.) by a Court in the Province of w. Pakistan shall be deemed to be valid service, see W.P. Gaz., 1959, Ext. P. 843.

2 Ins. by the Code of Civil Procedure (Amdt.) Act, 1940 (34 of 1940).

Revenue Court situated ¹[outside Pakistan] may be sent to the Courts ²[in Pakistan] and served as if they ³[were summonses] issued by such Courts:

⁴[Provided that the Courts issuing such summonses ⁵[or processes have been established or continued by the authority of the ⁶[Federal Government] ⁷* * * or that the Provincial Government ⁸[of the Province in which such summonses or processes are] to be served has by notification in the official Gazette declared the provisions of this section to apply to ⁹[such Courts].

30. Power to order discovery and the like: 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.

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

32. Penalty for default:- 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 [two thousand] rupees;
- (d) order him to furnish security for his appearance and in default commit him to [.....] prison.

¹ The original words "beyond the limits of British India" were first subs. by A.O., 1949, and then amended by the Central laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), to read as above. bg

² The original words "in British India" were first subs. by A.O., 1949, and then amended by Ord. 21 of 1960, s. 3 and 2nd Sch (with effect from the 14th October, 1955), to read as above.

³ Subs. By the Code of Civil Procedure (Amdt.) Act, 1940 (34 of 1940), s. 2(1)(a)(ii), for "had been".

⁴ Subs. by A.O., 1937, for the original proviso.

⁵ Ins. by Act 34 of 1940, s. 2(1)(b)(i).

⁶ Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government"

⁷ The words "or of the Crown Representative" omitted by A.O., 1949.

⁸ Subs. by Act 34 of 1940, s.2 (1)(b)(ii) for "by whose Courts a summons is". The Substitution with the omission of the words "or process" is to be deemed to have taken effect on the 1st day of April, 1937.

⁹ Subs. ibid. s.2(1)(b)(iii), for "courts of the Province". The substitution is to be deemed to have taken effect on the 1st April, 1937.

JUDGMENT AND DECREE

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

INTEREST

34. Interest: -(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 therefore shall not lie.

¹**[34.A. Interest on public dues:-** (1') Where the Court is of opinion that a suit was instituted with intent to avoid the payment of any public dues payable by the plaintiff or on his behalf, the Court may, while dismissing such suit, make an order for payment of interest on' such public dues at the rate, of two per cent. above the prevailing bank rate.

(2) Where the Court is of opinion that the recovery of any public dues from the plaintiff was unjustified, the Court may, while disposing of the suit, make an order for payment of interest on the amount recovered at the rate of two per cent., about the prevailing bank rate.

Explanation- In this section-

- (a) "bank rate" means the bank rate determined and made public under the provisions of the State Bank of Pakistan Act, 1956 (XXXIII of 1956); and
- (b) "public dues" includes the dues of any bank owned by the Federal Government or of any corporation or undertaking owned or controlled by the Federal Government or a Provincial Government or of any local authority.

²**[34.B. interest etc, on dues of banking company:-** Where and in so far as a decree is for payment of money due to a banking company in repayment of a loan advanced by it, the Court shall, in the decree, provide for interest or return, as the case may be, on the judgment debt from the date of decree till payment-

¹ New's . section 34A was ins. by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s.3

² Section 34 B ins. by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (63 of 1980), s. 2.

- (a) In the case of interest-bearing loans, for interest at the contracted rate or at the rate of two percent above the bank rate, whichever is the higher;
- (b) In the case of loans given on the basis of markup in price, lease, hire-purchase or service charges, for the contracted rate of mark-up, rental, hire or service charges, as the case may be, or at the latest rate of the banking company for similar loans, whichever is the higher; and
- (c) in the case of loans given on the basis of participation in profit and loss, for return at such rate, not being less than the annual rate of profit for the preceding six months paid by the banking company on term deposits of six months, accepted by it on the basis of participation in profit and loss, as the Court may consider just and reasonable in the circumstances of the case, keeping in view the profit-sharing agreement entered into between the banking company and the judgment-debtor when the loan was contracted.

Explanation.-(1) In this section in clause (a), "bank rate" has the same meaning as in section 34-A.

COSTS

35. Costs:- (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 an incident to all suits shall be in the discretion of the Court, and the Courts 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 Courts may give interest on costs at any rate not exceeding six percent per annum, and such interest shall be added to the Costs and shall be recoverable as such.

¹[35-A. Compensatory costs in respect of false or vexatious claims or defences:- (1) If in any suit or other proceeding ²[(including an execution 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

¹ S. 35A was ins. by s.2 of the Civil Procedure (Amdt.) Act, 1922 (9 of 1922), which, under section 1(2) thereof, may be brought into force in any Province by the Provincial Government on any specified date. It has been so brought into force in Punjab and Sind.

² Ins. by the Code of Civil Procedure (Amdt.) Ordinance, 1962 (44 of 1962), s. 9 as amended by the Code of Civil Procedure (Amdt.) Act, 1963 (3 of 1963), s. 3.

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 twenty¹[five 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 Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

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

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

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

PART II

EXECUTION

GENERAL

36. Applications to order: 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.

37. Definition of Court which passed a decree: 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 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

¹ Subs. by Ord. 44 of 1962, s. 9 for "one thousand".

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

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

39. Transfer of decree:- (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 immovable 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 it for execution to any subordinate Court of competent Transfer of decree to Court in another Province. Result of execution proceedings to be certified.

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

41. Results of execution proceedings to be certified: 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.

1[42. Powers of Courts in executing transferd decree:- (1) The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed Court in by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner ac if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

¹ S. 42 renumbered as sub-section (1) of that section by the Code of civil Procedure (Amdt.) Ordinance, 1962 (44 of 1962), s. 10.

¹[(2) Without prejudice to the generality of the foregoing provision, the Court executing a decree sent to it shall have the following powers, namely:-

- (a) power under section 39 to transfer the decree to another Court, if necessary;
- (b) power under subsection (1) of section 50 to permit execution to proceed against the legal representatives of a deceased judgment-debtor;
- (c) power under section 152 to correct clerical or arithmetical errors;
- (d) power under rule 16 of Order XXI to recognize the assignment of a decree;
- (e) power under sub-rule (2) of rule 50 of Order XXI to grant leave to a decree-holder to proceed against a person not already recognized as a partner in a firm in an execution proceeding against the firm;
- (f) power under clause (b) of sub-rule (1) of rule 53 of Order XXI to give notice of attachment of decree passed by another Court.]

43. Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory: Any decree passed by a civil Court established in any ²[area in Pakistan] to which the provisions relating to execution do not extend, ³* * * 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 Pakistan.

44. Execution of decrees passed by Courts of Acceding States:- [Omitted by Federal Laws (Revision and Declaration) Ordinance 1981 (27 of 1981), s. 3 and Second Schedule.

44.A. Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory:-(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 Pakistan 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.

¹ Sub-section (2) added *ibid*.

² The original words "part of British India" have successively been amended by A.O., 1949 and the Central Laws (Statute Reform) Ordinance 1960 (2 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955) to read above.

³ The words "or by Court established or continued by the authority of the Federal Government in any Acceding State". Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch. Which had previously been amended by various enactments.

Explanation 1.-"Superior Court" 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 1[the United Kingdom and such other country or territory as ¹[the Federal Government] may, from time to time, by notification in the ²[official Gazette], declare³ to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

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

- (a) With reference to superior Courts in the United Kingdom, includes judgments given and decrees made in any Court in appeals against , such decrees or judgments, but
- (b) In no case includes an arbitration award, even if such award is enforceable as a decree or judgment.]

45. Execution of decrees in foreign territory.-[Omitted by Ordinance (27 of 1981), *Second Sched., item 46(5)*].

46. Precepts:- (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:

¹ Subs. by F.A.O., 1975, Art. 2 and Table for "Central Government" which had been subs. by A.O., 1937, for "G.G. in C".

² Subs. by A.O., 1937, for "Gazette of India".

³ The Central Govt. has declared Fiji to be a reciprocating territory and the Supreme Court of Fiji to be a Superior Court of the territory for the purposes of this section, see Gaz. Of P., 1949, Pt. I, P. 275.

Certain Court of Paksitan have been elcared to be superior Courts for the purpose part I of the Foreign Judgment (Receiprocal Enforcement) Act, 1933 (23 Geo. 5 ch. 13), see Gaz. Of P., 1953, Pt. I, Pp. 143-44

The Central Government has declared the Colony of Singapore to be a reciprocating territory, and the Supreme Court of Singapore to be a superior Court of the terriroty for the purpose of this section. See Gaz. Of P. 1954, Pt. I, P. 106.

Certain Courts in Paksitan have been declared to be superior Court for the purpose of section 5 of the Reciprocal Enforcement of Judgment Ordinance of Singapore , see gaz. Of P., 1954, Pt. I, P. 296.

The Central Government has declared the Australian Capital Terriroty to vbe a receiprocating terriroty , and the Supreme Court of Australian Capital Terriroty to be a superior Court of the Territory for the Purposes of this section see, Gaz. Of P. 1957, Pt. I, P. 174.

The Central Governemnt has declared "New Zeland including the Cook Islands (including Nive) and the Trust Terriroty , and the Supreme Court of New Zeland to be a superior Court of that terriroty, for the purposes of this section (with effect from the August, 1938), see Gaz. Of 1958, Pt. I, P. 455.

The Central Government has declared the Northern Terriroty of Australia to ba reciprocating , and the Supreme Court of the said territory to be a superior court of the territory for the purposes of this section, see Gaz. Of P., 1959, Pt. I, P. 425.

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

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE

47. Questions to be determined by the Court executing decree:- (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 representative of a party, such question shall, for the purpose 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

¹48 Execution barred in certain cases:- (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of ²[six 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 six years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within six years immediately before the date of the application; or

¹ This section has been amended in its application to Sind by the Sind Rural Credit and Land Transfer Act, 1947, (49 of 1947), s. 18.

² Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s. 2 and Sch. For "twelve years".

- (b) to limit or otherwise affect the operation of article ¹[183 of the First Schedule to the Limitation Act, 1908.]

TRANSFER FEES AND LEGAL REPRESENTATIVES:

49. Transfer:- 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.

50. Legal representative:- (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 as it thinks fit.

PROCEDURE IN EXECUTION

51. Powers of Court to enforce execution:- 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.

²[Provided that, ³* * * 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,-

¹ Subs. by the Code of Civil Procedure (Amdt.) Act, 1940 (34 of 1940) s. 3, for “ 180 of the Second Schedule to the Indian Limitation Act, 1877.

² Provided and Explanation were ins. by the Code of Civil Procedure (Amdt.) Act, 1936 (21 of 1936), s. 2.

³ The words and commas, “where the decree is for the payment of money”, were omitted by the Code of Civil Procedure (Amdt.), Ordinance, 1980 (10 of 1980), s. 4.

- (i) is likely to abscond or leave the local limits of the jurisdiction of the Court; or
- (ii) has, after the institution of the decree was passed, dishonestly transferred, concealed, or removed any part committed any other act of to his property; or

(b) that the judgment-debtor has, or has had date of the decree, the means to pay the decree or some substantial part thereof or neglects or has refused or neglected 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.]

52. Enforcement of decree against legal representative -(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.

53. Liability of ancestral property: 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.

54. Partition of estate of separation of share: Where the decree is for the partition of an undivided estate assessed to the payment of revenue to ¹[the Government] or for the separate possession of a share of such 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

¹ The Original words "the Government" were first subs. by A. O., 1937 and then amended by A.O., 1961, Art. 2 (with effect from the 23rd March, 1956), to read as above.

55. Arrest and detention:-- (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 ¹[which may make an order for his detention in prison to suffer simple imprisonment for a period not exceeding one year];

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 present 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 ²[Provincial Government] may by notification in the ³[official Gazette], declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Provincial Government in this behalf.

⁴[(3) A judgment-debtor detained in prison under sub section (1) shall not, merely by reason of undergoing such imprisonment, be discharged from his liability under the decree, but he shall not be liable to be re-arrested under the decree in execution of which he was so detained in prison.]

56. Prohibition of arrest or detention of women in execution of decree for money: Notwithstanding anything in this Part, the Court the arrest or detention in the ⁵*prison xecution of a decree for the payment of money.

⁶57. Subsistence Allowance. Omitted by the Code of Civil Procedure (Amdt) Ordinance, 1980 (Xof 1980), s. 7

¹ Certain words which were amended by A.O., 1937, have been subs. by the code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), sl 5.

² Subs. by A.O., 1937, for "L.G."

³ Subs. *ibid.*, for "local official Gazette".

⁴ The original sub-sections (3) and (4), as amended by the code of Civil Procedure (Amdt.) Act, 1921 (3 of 1921), s. 2, have been subs. by the code of Civil Procedure (Amdt.) Ordinance 1980 (10 of 1980), s. 5.

⁵ The word "civil" was omitted by Ord. 10 of 1980, s.6.

⁶ S. 57 was amended by A.O., 1937.

¹[**58. Release form detention:-** Every person detained in prison in execution of decree shall be released from such detention, before the expiry of the period of detention, if-

- (a) the amount mentioned in the warrant for his detention is paid to the officer in charge of the prison; or
- (b) the decree against him is otherwise fully satisfied; or
- (c) the person on whose application he has been detained so requests;

Provided that he shall not be released from such detention without the order of the Court.]

²59. Release on ground of illness. Omitted by the Code of Civil Procedure (Amdt) Ordinance 1980 (x of 1980), s. 9

ATTACHMENT

60. Property to liable to attachment and sale in execution of decree:- (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 4other saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which. be 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 of 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 any woman;

(b) tools of artisans arid, where the judgment-debtor is art 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;

¹ Subs. by the code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s.8, for the original s. 58.

² S. 59 was amended by A.O., 1937.

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

(d) books of accounts;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to ¹[pensioners of the Government], or payable out of any service family pension fund notified² in the ³[official Gazette] by . ⁴[the] ⁵[Federal Government] or the Provincial Government] in this behalf, and political pensions ;.

⁶[(h) the wages of labourers and domestic servants, whether payable in money or in kind; ⁷* * * ;

⁸[(i) Salary to the extent of the first hundred rupees and one half the remainder;

Provided that where such salary is the salary of a ⁹[servant of the State] or a servant of a railway ¹⁰*or local authority and 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 ¹¹[¹²Pakistan Army Act, 1952],¹³* *

¹ The original words "Pensioners of the government" were first subs. by A.O., 1937 and then amended by A.O., 1961, Art. 2(with effect from the 23rd march, 1956), to read as above.

² For such Notification, see Gazette of India, 1909 Pt. I, p.5.

³ Subs. by A.O., 1937, "Gazette of India".

⁴ Subs. ibid., for " the G.G. in C".

⁵ Subs. by F.A.O. 1975, Art. 2 and Table, for "Central Government".

⁶ Subs. by the code of Civil Procedure (Second Amdt.) Act, 1937 (9 of 1937), s.2 for the original cls. (h) and (i). The amendments made by that section have no effect in respect of any proceedings arising out of a suit instituted before the 1st June, 1937: see ibid., s.3.

⁷ The words "and salary, to the extent of the first hundred rupees and one-half the remainder of such salary" omitted by the Code of Civil Procedure (Amdt.) Act, 1943 (5 of 1943) , s. 2.

⁸ Subs. for the existing cl. (i) and the proviso thereto ibid.

⁹ Subs. by A.O., 1961, Art. 2 and Sch., for "servant of the Crown" (with effect from the 23rd March., 1956).

¹⁰ The word "company" omitted by the Code of Civil Procedure (Amdt.) Ordinance, 1962 (44 of 1962), s. 13.

¹¹ Subs. by A.O., 1937, for "Indian Articles of War apply" .

¹² Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch., for "Indian Army Act, 1911" (with effect from the 14th October, 1955).

¹³ The words "or the burma Army Act" omitted by A.O., 1949.

applies]. ¹[or of persons other than commissioned officers to whom the ²[Pakistan Navy Ordinance, 1961] (XXXV of 1961) applies];

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

⁴(l) any allowance forming part of the emoluments of any ⁵[servant of the State] or of any servant of a railway ⁶*or local authority which the ⁷[appropriate Government] may by notification⁸ in the ⁹[official Gazette] declare to be exempt from attachment, and any subsistence grant or allowance made to ¹⁰[any such 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 ¹¹[any Pakistan law] to be exempt from liability to attachment or sale in execution of a decree; and

(p) Where the judgment debtor is a person liable for the pays merit of land revenue, any movable 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.

¹²[*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, ¹³[and in the case of salary other than salary of a ¹⁴[servant of the State] or a servant of a railway ¹⁵* or local authority the attachable portion thereof is exempt from attachment until it is actually payable].

¹ Ins. by the amending Act, 1934 (35 of 1934), S.2 and Sch.

² Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch., for "Naval Discipline Act as modified by the Pakistan Navy (Discipline)" Act, 1934".

³ Subs. by the code of civil Procedure (Second Amdt.) Act, 1937 (9 of 1937), s.2 for "1897".

⁴ Subs. *ibid.*, for the original clause. See also foot-note 6 on preceding page.

⁵ Subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March., 1956), for "servant of the Crown" which had been subs. by the code of civil Procedure (Amdt.) Act, 1943 (5 of 1943), s. 2, for "public officer".

⁶ The word "company" omitted by the Code of Civil Procedure (Amdt.) Ordinance, 1962 (44 of 1962), s. 13.

⁷ Subs. by A.O., 1937, for "G.G. in C."

⁸ For notification exempting certain allowance payable to any public officers in the service of the Central Government, or any servant of a Federal Railway or of a cantonment authority or of the port authority of a major port, for attachment, see G. of I. Judicial Department Notification No. 186/37, dated 2nd October, 1940, published in the supplement to Gen. R. & O., Pt. II, Vol. VI, p.253.

⁹ Subs. by A.O., 1937, for "Gazette of India".

¹⁰ Subs. by Act 5 of 1943, s.2, for "any such officer or servant".

¹¹ The original words "any law passed under the Indian Council Acts' 1861 and 1892" have successively been amended by A.O., 1937, and A.O., 1949, to read as above.

¹² The original Explanation was re-numbered as Explanation 1 by the code of Civil Procedure (Second Amdt.) Act, 1937 (9 of 1937), s.2.

¹³ Ins. *ibid.*, See also foot-note 6 on page 357, *supra*.

¹⁴ Subs. for the existing cl. (i) and the proviso thereto *ibid.*

¹⁵ Subs. by A.O., 1961, Art. 2 and Sch., for "servant of the Crown" (with effect from the 23rd March., 1956).

¹[Explanation 2.-In clauses (h) and (1), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.]

²[Explanation 3: clause (I) "appropriate Government" means-

- (i) As respects any ³[person] in the service of the ⁴[Federal Government], or any servant ⁵[of railway or] ^{6***}cantonment authority or the port authority of a port, the ⁸[Federal Government];

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*

- (iii) As respects any other ³[servant of the State] or a servant of any ^{8***}local authority, the Provincial Government].

(2) Nothing in this section shall be deemed-

^{9*}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, *¹

1* * * * *

61. Partial exemption of agricultural produce: The ¹⁰[Provincial Government] ^{11***}may, by general or special order published in the ¹²[Official Gazette, declare that such portion of agricultural produce, or of any class of agriculture produce, as may appear to the Provincial Government to be for the purpose of providing until the next harvest for the due cultivation of the land and for the support judgment-debtor and his family, shall, in the case of all turists or of any class of agriculturist be exempted from to attachment or sale in execution of a decree.

62. Seizure of property in dwelling house: (1) No person executing any process under this directing or authorizing seizure of movable property shall any dwldiling.house after sunset and before sunrise.

¹ Explanation 2 was added by Act 9 of 1937, s. 2. See also foot-note 6 on page 357, supra.

² Explanation 3 ins. by A.O., 1937.

³ Subs. by Act 5 of 1943, s.2, for "public officer".

⁴ Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government".

⁵ Ins. ibid. Art. 2 and Sch. (with effect from the 14th August, 1973).

⁶ The original words "of a Federal Railway or" as amended by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd march, 1956), have been omitted by the Code of Civil Procedure (Amdt.) Ordinance, 1962 ((44 of 1962), s.13.

⁷ C., (ii) omitted by A.O., 1949.

⁸ The original words "other railway or" as amended by ord. 44 of 1962 s.13, have been omitted by F.A.O., 1975, Art. 2 and Sch. (with effect from the 14th August, 1973).

⁹ The letter and brackets "(a)", the word "or", and c.; (b) rep. by the Repealing and Amending Act, 1914 (10 of 1914), s.3 and 2nd Sch.

¹⁰ Subs. by A.O., 1937, for "L.G."

¹¹ The words "with the previous sanction of the G.G. in C.", rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. Pt. I.

¹² Subs. by A.O., 1937, for "local official Gazette".

(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.

63. Property attached in execution of decrees of several Courts:- (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. Private alienation of property after attachment to be void: 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.

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

SALE

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

66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff: (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.

(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,

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

⁵(2) When on the date on which this Code came into operation in any local area, any special rules as to sale of land in execution of decrees were in force therein, the ⁶[Provincial Government] may, by notification in the ⁷[official Gazette] declare such rules to be in force, or may, ^{8***}by a like notification, modify the same.

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

DELEGATION TO COLLECTOR OF POWER TO EXECUTE DECREES AGAINST IMMOVABLE PROPERTY

68. Power to prescribe rules for transferring to Collector execution of certain decrees: The Provincial Government may declare by notification in the official Gazette that in any local area the execution of decrees in cases in which a Court has ordered any immovable 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 immovable property, shall be transferred to the Collector.

69. Provisions of Third Schedule to apply: 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.

70. Rules of procedure:- (1) The Provincial Government 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;

¹ The original s. 67 was re-numbered as sub-section (1) of that section by the Code of Civil Procedure (Amdt.) Act, 1914 (1 of 19140) , s.3.

² Subs. by A.O., 1937, for "L.G." .

³ The words "with the previous sactions of the G.G. in C." omitted by the Devolution Act, 1920 (38 of 1920), s.2 and First Sch., Pt.I.

⁴ Subs. by A.O., 1937, for "local official Gazette".

⁵ Sub-section (2) was ins. by theCode of Civil Procedure (Amdt.) Act, 1914 (1 of 1914), s.3.

⁶ Subs. by A.O., 1937, for "L.G." .

⁷ Subs. *ibid.*, for "local official Gazette" .

⁸ The words "with the previous sanction of the G.G. in C." were omitted by the Devolution Act, 1920 (38 of 1920), s. 2 and First Sch. Pt.I.

(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 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

Jurisdiction of Civil Courts barred: (2) A power conferred by rules made under subsection (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.

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

72. Where the Court may authorize Collector to stay public sale of land: (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 temporary alienation of the land or share the Court may authorise 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 cases the provisions of section 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

DISTRIBUTION OF ASSETS

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

Provided as follows:-

(a) where any property is sold subject to a mortgage or charge, the mortgage or charge, the mortgage 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 in subject to a mortgage or charge, the Court may with the consent of the mortgage or incumbrancer, order that the property be sold free from the mortgage or charge giving to the mortgage or incumbrancer the same interests in the proceeds of the sale as he held in the property sold;

(c) where any immovable 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- secondly in discharging the amount due under the decree;

Thirdly in discharging the interest and principal monies due to subsequent incumbrances (if any); and

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

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

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

RESISTANCE TO EXECUTION

²**[74. Resistance to execution:-** (1) Where the Court is satisfied that the holder of a decree for the possession of property or a purchaser of property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or any other 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 the purchaser, order the judgment-debtor or such other person to undergo simple imprisonment for a term which may extend to thirty days and may further direct that the decree-holder or the purchaser be put into possession of the property.

(2) Notwithstanding anything contained in subsection (1), where a judgment-debtor or any other person resists or obstructs the execution of a decree, the Court may direct the officer in charge of the police-station within whose jurisdiction the judgment-debtor or such other person resides or where the property to which the decree relates is situate to provide, the necessary police assistance for the execution of the decree.

¹ The original words "the Government" were first subs. by A.O. 1937, and then amended by A.O., 1961, Art. 2 (with effect from the 23rd march, 1956) to read as above.

² Subs by the Code of Civil Procedure (Amdt.) Ordinance , 1980 (10 of 1980), s. 10, for the original s.74.

INCIDENTAL PROCEEDINGS COMMISSIONS

75. Power of Courts to issue commissions: 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. Commission to an other Court: (1) A commission for the examination of any person Commission may be issued to any Court (not being a High Court) situate in a Province other than Province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

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

77. Letter of request: In lieu of issuing a commission the Court may issue a Letter of letter of request to examine a witness residing at any place not request within ¹[Pakistan].

78. Commissions issued by foreign Courts: ²[Subject to such conditions and limitations as may be prescribed, the provisions as to the execution and return of come by foreign missions for the examination of witnesses shall apply to commission issued by or at the instance of]

(a) Courts situate beyond the limits of ²[Pakistan and established] or continued by the authority of ³***⁴[the ⁵[Federal Government]⁶***], or

(b) Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Schedule

¹ Subs. by the Central Laws (Statute Reforms) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

² Ins. by the Code of Civil Procedure (Amdt.) Act, 1932 (10 of 1932), section 2.

³ The words "His Majesty or of" omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd march, 1956).).

⁴ Subs. by A.O., 1937 for "the G.G.in C.".

⁵ Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government".

⁶ The words "or of the Crown Representative" omitted by A.O. , 1949.

1* * * * *

(c) Courts of any State or country outside Pakistan.

PART IV SUITS IN PARTICULAR CASES

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

²[79. Suit by or against the Government:-

³***In a suit by or against the ⁴[Government] the authority to be named as plaintiff or defendants as the case may be, shall be-

- (a) in the case of a suit by or against the ⁵[Federal Government], ⁶[Pakistan];
- (b) in the case of a suit by or against a Provincial Government, the Province; and

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⁸[80. Notice:- (1) A suit may be instituted against the Government or against a public officer, In respect of any act purporting to be done by such public officer in his official capacity, after the expiration of two months next after notice in writing has been delivered to or left at the office of-

(a) in the case of a suit against the Federal Government, a Secretary to that Government;

- (b) (i) In the case of a suit against the Provincial Government other than a suit relating to the affairs of a Railway, a Secretary to that Government or the Collector of the District; and

¹ Clause (b) as amended by A.O., 1949 and Act 10 of 1932, s.2, has been omitted by the Federal laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch.,

² Subs. by A.O., 1937, for the original s.79.

³ The words 2nd figures "Subject to the provisions of sections 179 and 185 of the Government of India Act, 1935," omitted the Federal Laws (Revision and Declaration) Act 1951, (26 of 1951), s.3 and 2nd Sch..

⁴ Subs. by A.O., 1961, Art. 2 for "Crown" (with effect from the 23rd March, 1956).

⁵ Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government".

⁶ The original words "the Governor General in Council before the establishment of the Federation of India, and thereafter, the Federation" have successively been amended by AO., 1949 , Act 26 of 1951, s.3 and 2nd Sch. and the Code of Civil Procedure (Amdt.) Ordinance 1962 (44 of 1962), s. 14, to read as above.

⁷ Cl. (c) omitted by A.O., 1949.

⁸ The original s. 80 has successively been amended by A.O., 1937, the Code of Civil. Procedure (Amdt) Act, 1948 (7 of 1948), s. 2, A.O., 1949, A.O. 1961, Art. 2 (with effect form the 23rd March, 1956) and Ord. 44 of 1962, s.15. to read as above.

(ii) In the case of a suit against the ¹[Federal Government] relating to the affairs of a Railway, the General Manager of the Railway concerned,

and in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description of 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.

(2) Where any such suit is instituted without delivering or leaving such notice as aforesaid or before the expiration of the said period of two months or where the plaint does not contain a statement that such notice has been so delivered or left, the plaintiff shall not be entitled to any costs if settlement as regards the subject-matter of the suit is reached or the Government or the public officer concedes the plaintiff's claim, within the period of two months from the date of the institution of the suit:

Provided that in a suit instituted without such notice, the Court shall allow not less than three months to the Government to submit its written statement.

81. Exemption from arrest and personal appearance: 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.

82. Execution of decree:- (1) Where the decree is against ²[the Government] or Execution 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 ³[Provincial Government.]

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

⁴[SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS]

¹ Subs. by F.A.O. 1975, Art. 2 and Sch. (with effect from the 14th August, 1973), for "Provincial Government".

² The original words "the Secretary of State for India in Council" were first subs. by A.O., 1937 and then amended by A.O., 1961, Art. 2 (with effect from the 23rd March, 1956), to read as above.

³ Subs. by A.O., 1937, for "L.G.".

⁴ Subs. by the Code of civil Procedure (Amdt.) Ordinance, 1960 (22 of 1960), s.2, for "SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS AND RULERS OF ACCEDING STATES" as amended by A.O., 1937 and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s.4 and 3rd Sch.

83. Why aliens may sue:- (1) Alien enemies residing ¹[in Pakistan] with the permission of the ²[Federal Government], an alien friends, may sue in the Courts ³[in the Provinces], as if they were ⁴[Citizens of Pakistan].

(2) No alien enemy residing ²[in Pakistan] 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 ⁵[or engaged in military operations against] ⁶[Pakistan], and carrying on business in that country without a license in that behalf under the hand ^{7***}of a Secretary to the ⁸[Federal Government] shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in a foreign country.

84. When foreign states may sue:- (1) A foreign State may sue in any Court [in the Province]:

Provided that such State has been recognized by ^{9***}the Federal Government:

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 iii his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by the Federal Government.

85. Persons specially appointed by Government to prosecute or defend for Rulers of foreign State: ¹⁰(1) Persons specially appointed by order of the ¹¹[Federal Government] at the request of the Ruler of any foreign State, or at the request of any person competent, in the opinion of the Federal Government to act on behalf of such Ruler, 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 Ruler.

12* * * * *

¹ Subs. by A.O., 1949, for "in British India".

² Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government" which had been subs. by A.O., 1937, for "G.,G" in C".

³ Subs. by A.O., 1949, for " of British India".

⁴ Subs. by A.O., 1961, Art. 2 and Sch. For "Subjects of His Majesty" (with effect form the 23rd March, 1956).

⁵ Ins. by the code of Civil Procedure (Amdt.) Act, 1965 (19 of 1965), s.2.

⁶ Subs. by A.O., 1949, for "the United Kingdom of Great Britian and Ireland".

⁷ The words "of one of His Majesty's Secretaries of State or" omitted, ibid.

⁸ Subs. by F.A.O., 1975, Art. 2 and Table for "Central Government" which had been subs. by A.O., 1937, for "Government of India".

⁹ The words "His majesty or by" omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

¹⁰ Subs. and shall be deemed to have been so subs. on the 14th day of Octover, 1955, by the Code of Civil Procedure (Amdt.) Ordinance, 1960 (22 of 1960), s.3, for the existing sub-section (1), as amended by A.O., 1949 and the Central laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch.

¹¹ Subs. by F.A.O., 1975, Art. 2 and table, for "Central Governemnt".

¹² The Explanation which had been ins. by A.O., 1937, omitted by A.O. 1949.

(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[Ruler].

(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.

²86. Suits against Rulers. Repealed by the State Immunity Ordinance, 1981 (vi of 1981), s.19

86-A. Suits against diplomatic agents:- (1) No proceeding in any Court shall lie against a diplomatic agent except in a case relating to-

- (a) any private immovable property situated in Pakistan held by him in his private capacity and not on behalf of the sending State for the purpose of the mission;
- (b) a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) any professional or commercial activity exercised by the diplomatic agent in Pakistan outside his official functions.

(2) No measures of execution shall be taken in respect of a diplomatic agent except in cases which come under clauses (a), (b) and (c) of subsection (1) and in which such measures can be taken without infringing the inviolability of his person or of his residence.

(3) The initiation of any proceedings in a Court by a diplomatic agent shall, preclude him from invoking immunity from jurisdiction under this section in respect of any counter-claim directly connected with the principal claim.

(4) The immunity of a diplomatic agent under subsection (1) or subsection (2) may be waived by the sending State; and any such waiver shall be express.

(5) Waiver of immunity in respect of any proceedings shall not be held to imply waiver of immunity in respect of any measure of execution for which a separate waiver still be necessary.

(6) In this section, 'diplomatic agent' in relation to a State means the head of the mission in Pakistan of that State and includes a member of the staff of that mission having diplomatic rank.

¹ Subs. and shall be deemed to have been so subs. on the 14th day of October, 1955, by Ordinance 22 of 1960, s.3 for "Prince or Chief".

² This section was previously amended from time to time by various enactments.

¹87. *Style of Rulers as Parties to suits. Repealed by the State Immunity Ordinance, 1981 (VI of 1981), s. 19.*

²* * *

³87-A. *Application of sections 85 and 86 to Rulers of acceding States.]. Omitted by the Code of Civil Procedure (AMDT) Act, 1972 (II of 1972), s.2*

INTERPLEADER

88. Where inter pleader suit may be instituted: Where two or more persons claim adversely to one another the same debt, sum of money or other property movable or immovable, from another person, who claims no interest therein other than or 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. [Arbitration] Omitted by the Arbitration Act, 1940 (X of 1940), S. 49 and Third Schedule.

¹[89 A. **Alterante dispute resolution:-** The Court may, where it considers necessary having regard to the facts and circumstances of the case, with the object of securing expeditious disposal of a case in or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including medaitaion and conciliation].

SPECIAL CASE

90. Power to state for opinion of Court: 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

¹ This section was previously amended by various enactments from time to time.

² The heading "SUITS AGAINST RULERS OF ACCEDING AND MERGED STATES" as ins. by Ord. 22 of 1960, s.6, has been omitted by the Code of Civil Procedure (Amdt.) Act, 1972 (2 of 1972), s.2.

³ S. 87A was ins. by Ord. 22 of 1960, s.6.

prescribed.

SUITS RELATING TO PUBLIC MATTERS

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

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

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

- (a) removing any trustee,
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (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.

¹ Subs. by A.O., 1937, for "L.G." .

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

93. Exercise of powers of Advocate General:- The powers conferred by sections 91 and 92 on the Advocate-General may, ¹****be with the previous sanction of the Provincial Government, exercised also by the Collector or by such officer as the Provincial Government may appoint in this behalf.

PART VI

SUPPLEMENTAL PROCEEDINGS

94. Supplemental Proceedings: 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;

95.compensation for obtaining arrest attachment or injuncation on in sufficient grounds: - (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 injuncation 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 probably ground for instituting the same;

¹ The words "outside the Presidency-towns" omitted by A.O., 1949.

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 ¹[ten thousand] rupees, as it deems a reasonable compensation to the defendant for the expense of 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 FROM ORIGINAL DECREES

96. Appeal from original decree:-- (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 panics.

97. Appeal from final decree where no appeal from perlminary decree: Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98. Decisions where appeal heard by two or more Judges: (1) Where an more Judges, the appeal opinion of such Judges.

(2) Where there is no such judgment varying or reversing the decree shall be confirmed:

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

¹ Subs. by Act XIV of 1994, s.8.

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

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

APPEALS FROM APPEALATE DECEES

100. Second appeal:- (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 a High Court on any of the following grounds, namely:

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

2* * * * *

101. Second appeal or no other grounds: No second appeal shall lie except on the grounds mentioned in section 100.

³102. No second appeal in certan cases: No second appeal shall lie in any suit of the nature cognizable by Courts of Small Cuses and in any other suit when the amount or value of the subject –matter of the original suit does not exceed the amount or value as the Provincial Govenrmnent may by law determine.

103. Power of High Court to determine issues of fact: 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 ⁴[which has not been determined by the lower appellate Court or which has

¹ Sub-section (3) ins. by the repealing and Amending Act, 1928 (18 of 1928), s.2 and First Sch.

² Sub-section (2) omitted by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s.11.

³ Subs. by Act. VIII of 04, s.2.

⁴ Subs. by the Code of Civil Procedure (Amdt.) Act, 1926 (6 of 1926) s.2, for “but not determined by the lower appellate Court”.

been wrongly determined by such Court by reason -of any illegality, omission, error or defect such as is referred to in subsection (1) of section 100.]

APPEALS FROM ORDERS

104. Orders from which appeal lies:- (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: -

1* * * * *

²(f) an order under section 35-A;

(ff) an order under section 47;

(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:

³[Provided that no appeal shall lie against any order specified in clause ⁴[(f)] save on the ground that no order, or an order for the payment of a Jess amount, ought to have been made.]

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

105. Others order:- (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 appeared 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 subsection (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal there from, he shall thereafter be precluded from disputing its correctness.

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

¹ Cls. (a) to (f) omitted by the Arbitration Act, 1940, (10 of 1940), s. 49 and 3rd Sch.

² Subs. by Ord. 12 of 1972, s.2 and Sch., for cl. (ff) which was previously ins. by the Civil Procedure (Amdt.) Act, 1922, (9 of 1922), s.3.

³ Proviso ins. by the Civil Procedure (Amdt.) Act, 1922 (9 of 1922), s. 3. See also foot note to s. 35A, *supra*.

⁴ Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch. for “ (ff).”

GENERAL PROVISIONS RELATING TO APPEALS

107. Powers of Appellate Court:- (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 imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from Appellate decrees and others: The provisions of this Part relating to appeal from original decrees shall, so far as may be, apply to appeal-

- (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.

¹APPEALS TO THE ²[SUPREME COURT]

³[109. When appeals lie to the Court: An appeal from a judgment decree or final order of a High Court shall lie to the Supreme Court -

(a) if the amount or value or the subject-matter or the dispute in the court of first instance was and also in appeal is (unless varied by an Act or Parliament) fifty thousand rupees or upward and the judgment decree or final order appealed from has varied or set aside the judgment decree or final order of the Court immediately below; or

(b) if the judgment, decree or final order involves directly or indirectly, some claim or question respecting property or the like amount or value and the judgment, decree or final order

¹ See also the Federal Court (Enlargement of Jurisdiction) Act, 1949 (1 of 1950), s. 6 and the Privy Council (Abolition of Jurisdiction) Act, 1950, s. 9.

² Subs. by A.O., 1961, Art. 2 and sch., for "King in Council" (with effect from the 23rd March, 1956).

³ The original s. 109 has successively been amended by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), A.O., 1961, Art.2 and Sch. (with effect from the 23rd March, 1956), and F.A.O., 1975, Art.2 and Sch. (with effect from the 14th August, 1973), to read as above.

appealed from has varied of set aside the judgment decree or final order of the Court immediately below; or

(c) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.].

¹**110.***Value of subject-matter [Omitted by Federal Adaptation of Laws Order (F.O.A of 1975) w.e.f 1st August 1973]*

111.Bar of certain appeals: Notwithstanding anything contained in section 109, no appeal shall lie to the ²[Supreme Court]:

¹ This section was amended by A.O., 1961, Art.2 and Sch. (with effect from the 23rd March, 1956).

² Subs by A.O., 1961, Art. 2 and Sch., for “His Majesty in Council” (with effect from the 23rd March, 1956).

(a) from the decree or order of one Judge of a High Court ¹* * *, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court, constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or

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

²**111.A Appeals to Federal Court:-** [Omitted by the Federal Court Act, 1941 (XXI of 1941), s. 2.

112. Savings:- ³(1) Nothing contained in this Code shall be deemed-

- (a) to affect the powers of the Supreme Court under Article ⁴[191 of the Constitution or any other provision thereof]; or
- (b) to interfere with any rules made by the Supreme Court, and for the time being in force, for the presentation of appeals to that Court, or their conduct before that Court.

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

PART VII

REFERENCE REVIEW AND REVISION

113. Reference to High Court. - 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.

⁵**[114.-(1)** 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.

¹ The existing words “constituted by His majesty by Letters Patent” as amended by A.O., 1937 and Act 13 of 1916. Sch., have been Omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

² This section was ins. by A.O., 1937.

³ Subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March 1956), for the original sub-section(1).

⁴ The words “Article 158 of the constitution or any other provision of that Constitution” have successively been amended by A.O., 1964, Art. 2 and Sch. and F.A.O., 1975, Art. 2 and Sch. (with effect from the 14th August, 1973), to read as above.

⁵ Subs. by F.A.O., 1975, Art. 2 and Sch., for the original s. 114.

(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.

(2) Nothing contained in sub-section (1) shall apply to a review of any judgment pronounced or order made by the Supreme Court.

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

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

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

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit[:]².

³[Provided that where a person makes an application under this subsection, he shall in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.[:]

⁴[Provided further that such application shall be made within ninety days of the decision of the subordinate Court ⁵which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months.]

[⁶(2) The District Court may exercise the powers conferred on the High Court by subsection (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If any application under subsection (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Court against an order made under subsection (2) by the District Court.]

¹ S. 115 re-numbered as sub-section (1) of that section by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

² Subs. by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s.13, for full stop.

³ Proviso added *ibid*.

⁴ Subs added by Act VI of 1992, s. 3.

⁵ Added by Act. XIV of 1994, s.10

⁶ Sub-sections (2), (3) and (4) were added by the Law Reforms Ordinance, 1972 (12 of 1972), s. 2 and Sch.

PART IX
SPECIAL PROVISIONS RELATING TO¹ * * HIGH COURT

116. Part to apply only to certain High Courts ²: * * *

117. Application of Code to High Court: Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to³* High Courts.

118. Execution of decree before ascertainment of costs: Where any⁴* 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;

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

119. Unauthorised person not to address Courts: Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

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

5* * * * *

¹ The words “ THE CHARTERED” have been omitted by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955).

² The words “which are, or may hereafter be, constituted by His Majesty by Letters Patent” as amended by A.O., 1937 and Act 13 of 1916, Sch., have been omitted by Ord. 21 of 1960. s.3 and 2nd Sch. (with effect from the 14th October, 1955).

³The word “ such” has been omitted by Ord. 21 of 1960, s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

⁴ Added by Act. XIV of 1994, s.10

⁵ Sub-section (2) omitted by the Presidency-towns Insolvency Act, 1909 (3 of 1909), s. 127 and Third Sch.

PART X RULES

121. Effect of rules in First Schedule: 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.

122. ¹[The High Courts] ² * * * may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

123 Constitution of Rules Committees in certain Provinces:- (I) A Committee, to be called the Rule Committee, shall be constituted at ³[the town which is the usual place of sitting of each of the High Courts⁴ * * * ⁵* * *referred to in section 122].

(2) Each such Committee shall consist of the following persons namely:-

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or ⁶***a Divisional Judge for three years.

7* * * * *

- (b) Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Schedule

- ⁸[(c) two advocates practising in that Court and.

- (d) a Judge of a Civil Court subordinate to the High Court,

9* * * * *

¹ Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (*with effect from the 14th October, 1955*), for “Courts which are High Court for the purposes of the Government of India Act, 1935” as amended by A.O., 1937, A. O., 1949 and the Oudh Courts (Supplementary) Act, 1925 (32 of 1925), s.2 and Sch.

² The words “and the Chief Court of Lower Burma” were omitted by the Repealing and Amending Act, 1923 (11 of 1923), s. 3 and Second Sch. The words “Chief Court of Lower Burma” had been previously subs., for “Chief Courts of the Panjab and Lower Burma” by the repealing and Amending Act, 1919 (18 of 1919), s. 2 and First Sch.

³ Subs. by the Amending Act, 1916 (13 of 1916), s. 2 and Sch., for “each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon”.

⁴ The words “and the chief court” which had been ins. by Act 32 of 1925, s. 2 and Sch., were omitted by A.O., 1949.

⁵ The words “and of the Chief Court” omitted by Act 11 of 1923, s. 2 and First Sch. The words “of the chief court” had been previously subs., for “Chief Courts” by Act 18 of 1919, s. 2 and First Sch.

⁶ The words and parentheses “(in Burma)” were subs. for “(in the Punjab or Burma)” by s.2 and First Sch. of Act 18 of 1919, and were subsequently omitted by s.3 and Second Sch. of Act 11 of 1923.

⁷ Clause (b) omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch.

⁸ Subs., *ibid*, for clause (c).

⁹ The word “and” and cl. (e) omitted *ibid*.

(3) The members of each such Committee shall be appointed by the Chief Justice who shall also nominate one of their member to be president:

Provided that, if the Chief Justice elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two and the Chief Justice ^{1***}shall be the President of the Committee.

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

(5) There shall be a Secretary to each such Committee who shall be appointed by the Chief Justice and shall receive such remuneration as may be provided in this behalf ²[by the Provincial Government].

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

³[**125. Power of other High Court to make rules.** Omitted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960). S.3 and 2nd Sch. (with effect from the 14th October, 1955)]

⁴[**126. Rules to be subject to approval:** Rules made under the foregoing provisions shall be subject to the previous approval of the Government of the Province in which the Court whose procedure the rules regulate is situate or, if that Court is not situate in any Province, to the previous approval of the ⁵[Federal Government].

127. publication of Rules: Rules so made and ⁶[approved] shall be published in the ⁷[official Gazette***] and shall from the date of publication or from such other date as may be specified have the same force and effect within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

¹ The words " or Chief Judge" have been omitted by the Central laws (Statute Reforms) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955).

² Subs. by A.O., 1937., for "by the G.G. in C. or by the L.G., as the case may be"

³ S. 125 was amended by A.O. 1937 and the Devolution Act, 1920 (38 of 1920), s.2 and First Sch.

⁴ Subs. by A.O., 1937, for s. 126 as amended by the Amending Act, 1916 (13 of 1916), Sch.

⁵ Subs. by F.A.O., 1975, Art.2 and Sch. For "President" which had been subs. by A.O., 1961, Art. 2 (with effect from the 23rd March, 1956), for "Governor-General"

⁶ Subs. by the repealing and Amending Act, 1917 (27 of 1917), s.2 and First Sch., for "sanctioned".

⁷ Subs. by A.O. 1937, para 4(1), for "Gazette of India or in the local official Gazette, as the case may be". Strictly the substitution would read "official Gazette or in the official Gazette, as the case may be", but the latter words have been omitted as being redundant.

128. Matters for which rules may provide:-(1) Such rules shall not be 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 or the powers conferred by subsection

(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 or livestock and other movable property the fees payable for such maintenance and custody, the sale of such livestock and property and the proceeds of such sale.
- (c) procedure in suits by way of counter claim, 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 debt other than a penalty; or
on a guarantee, where the claim against the principle is in respect of a debt or a liquidated demand only; or on a trust; or
 - (ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been only 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, Prothonary 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.

¹[129. Power of the High Courts to make rules as to their original civil procedure: Notwithstanding anything in this Code, any High Court ^{2***}may make such rules not inconsistent with ³[its Letters Patent] to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

⁴130. Power of other High Courts to make rules as to matters other than procedure: *Omitted by A.O., 1961, Art . 2 and Sch (with effects from the 23rd March. 1956)*

131.Publication of rules: Rule made in accordance with section 129 ^{5***}shall be published in the official Gazette and shall from the date of publication or from such other date as may be specified have the force of law.

PART XI MISCELLANEOUS

132. Exemption of certain women from personal appearances:- (1) Women who according to the customs and manners of the country⁶ ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

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

133.Exemption of other persons:- (1) The ⁷[Provincial Government] may, by notification⁸ in the ⁹[official Gazette], exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Provincial Government and a list of such persons shall be kept

¹ The word "Chartered" omitted by the Federal laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch.

² The words "Constituted by His Majesty by Letters Patent" as amended by A.O., 1937 and the Amending Act, 1916 (13 of 1916), Sch., have been omitted by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955)

³ Subs. by Ord. 21 of 1960, s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Letters Patent establishing it".

⁴ S. 130 was amended by A.O., 1937, A.O., 1949 and the amending Act, 1916 (13 of 1916), Sch.

⁵ The words and figure "or section 130" have been omitted by A.O, 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁶ Subs. by A.O, 1937, para 4(1), for "Gazette of India or in the local official Gazette, as the case may be,". Strictly the substitution would read "official Gazette or in the official Gazette, as the case may be", but the latter words have been omitted as being redundant.

⁷ Subs. by A.O., 1937, for "L.G.".

⁸ For such notifications, see the different local Rules and Orders.

⁹ Subs. by A.O., 1937, for "local official Gazette.".

in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

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

134. Arrest other than in execution of decree: The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrest under this Code.

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

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

(3) Nothing in subsection (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.

¹[135-A. Exemption of members of Legistalative bodies from arrest and detention under civil process: -(I) No person shall be liable to arrest or detention in prison under civil process: -

- ²[(a) If he is member of ³*Legislature ^{4***5***}during the continuance of any meeting of such Legislature ^{6**};
- (b) If he is member of any committee of such ⁷[Legislature during the continuance of any meeting of such committee;

⁸* * * * *

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

¹ S. 135A ins. by the Legislative members Exemption Act, 1925 (23 of 1925), s.3.

² Subs. by A.O., 1937, for the original cl. (a).

³ The word "unicameral" omitted by A.O., 1949.

⁴ The words "or of either Chamber of a bicameral Legislature" omitted, *ibid*.

⁵ The words and figures "constituted under the Government of India Act, 1935" omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁶ The words "or chamber" omitted by A.O., 1949.

⁷ Subs. by A.O., 1937, for "Chamber or Council".

⁸ The original cl. © was first subs. by A.O., 1937 and then omitted by A.O. 1949.

(2) A person released from detention under subsection (1) shall, subject to the provisions of the said subsection, 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).

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

(1) Where an application is made that a person shall be arrested or that property shall be attached under any provision of this Code not relating to the execution or decree, and such person resides or such property is situated outside the local limits of the jurisdiction of the Court to which the application is made the Court may in its direction, issue a warrant or 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 situated a copy of the warrant or orders, 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 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 location 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.

1* * * * *

137. Language of sub-ordinate Courts: (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the Provincial Government otherwise directs.

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

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

¹ The original sub-section (4) as amended by A.O., 1937, has been omitted by A.O., 1949.

² Subs. by A.O., 1937, for "L.G".

138. Power of High Court to require evidence to be recorded in English: The ¹[High Court] may, by notification in the ²[official Gazette] direct with respect to any judge specified in the notification or failing under a description act forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

¹ Subs. by the Decentralization Act, 1914 (4 of 1914), s.2 and Sch., Pt. I, for "L.G".

² Subs. by A.O., 1937, for "local official Gazette".

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

139. Oath on affidavit by whom to be administered: In the case of any affidavit under this Code-

- (a) any Court or Magistrate, or
- (b) any officer or other person whom a High Court may appoint in this behalf, or ;
- ¹(c) any officer appointed by any other Court which the ²[Provincial Government] has generally or specially empowered in this behalf, may administer the oath to the deponent:

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

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

141. Miscellaneous proceedings: 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.

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

143. Postage: 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 ³[Provincial Government] ⁴***may remit such postage or fee or both or may prescribe a scale of court-fees to be levied in lieu thereof.

144. Application for the restitution:--(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 of such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including

¹ For notification empowering the District Judge, Karachi, to appoint the officers of District Courts for the purpose of this clause, see Gaz. Of P. 1956, Pt. 1. p. 294.

² Subs. by A.O., 1937, for "L.G.".

³ Subs. by A.O., 1937, for "L.G.".

⁴ The words "with the previous sanction of the G.G. in C." omitted by the Devolution Act, 1920 (38 of 1920), s.2 and first Sch., Pt.I.

orders for the refund of cost and for the payment of interested 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 subsection(1)

145. Enforcement of liability of surety: 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 fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings 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.

146. Proceedings by or against representatives: Save as otherwise provided by the 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 proceedings may be taken or the application may be made by or against any person claiming under him.

147. Consent or agreement by person under disability: 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 period, were under no disability and had given such consent or made such agreement.

148. Enlargement of time: 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.

149. Power to make up deficiency of court-fees: 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 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 is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Transfer of business: 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.

151. Saving of inherent powers of Court: 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.

152. Amendment of judgments, decrees or orders: 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.

153. General power to amend: 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.

154. Saving of present right of appeal. [Omitted by the Federal Laws (Revision and Declaration) Ordinance (27 of 1981), s.3 and Second Sched.]

155. Amendment of certain Acts. [Omitted by the Federal Laws (Revision and Declaration) Ordinance (27 of 1981), s.3 and Second Sched.]

156. [Repeals] Rep. by the Second Repealing and Amending Act 1914 (XVII of 1914), s.3 and Second Schedule.

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

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

THE FIRST SCHEDULE

(See section 121)

ORDER I

PARTIES TO SUITS

1. Who may be joined as plaintiffs: All persons may be joined in one suit as Plaintiffs in whom any right to [relief in respect of 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.

2. Power of Court to order separate trials: 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.

3. Who may be joined as defendants: 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 alternatively, where, if separate suits were brought against such persons, any common quest on of law or fact would arise.

4. Court may give judgement for or against one or more of joint parties: 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;
- (b) against such one or more of the defendants as may be found to be liable according to their respective liabilities

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

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

7. Where the plaintiff in doubt from whom redress is to be sought: 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.

8. One person may sue or defend on behalf of all in same interest: (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 person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule(1) may apply to the Court to be made a party to such suit.

9. Misjoinder and nonjoinder: No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in the matter in controversy so far as regards the rights and interests of the parties actually before it.

10. Suit in name of wrong plaintiff: (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.

(2) Court may strike out or add parties: 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, 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 unless the as may be the plaintiff thinks fit, 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.

(4) Where a defendant added, plaint to be amended: Where a defendant is added, the plaint shall, Court otherwise directs, be amended. in such manner necessary, and amended copies of the summons and of shall be served on the new defendant and, if the Court on the original defendant.

(5) Subject to the provisions of the ¹[Limitation Act, 1908], section 22, the proceedings added as defendant shall be deemed to service of the summons.

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

¹ Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch., for "Indian Limitation Act, 1877 (15 of 1877)".

12. Apperance of one of several plaintiffs of defendants for others: (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 proceedings; 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

13. Objections as to non-joinder or misjoinder: All objections on the ground of non-joinder 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

1. Freame of suit: 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.

2. Suit to include the whole claim: (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.

(2) Relinquishment or part of claim: 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 claim.

(3) Omission to sue for one of several reliefs: A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief; but if he omits, except with the leave of the Court, to sue for all such relief, 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 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. Joinder of causes of action:- (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.

4. Only certain claims to be joined for recovery of immovable property:- No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable 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.

5. Claims by or against executor, administrator or heir: 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 represent.

6. Order of Court to order separate trials: 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.

7. Objections as to misjoinder: 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 waived.

ORDER III

RECOGNIZED AGENTS AND PLEADERS

1. Appearance .etc, may be in person by recognized agent or by pleader: Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader¹[appearing, applying or acting, as the case may be,] on his behalf:

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

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

- (a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;
- (b) persons 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. Service of process on recognized agent:-(1) Processes served on the -recognized agent of a party shall be as effectual as if the same had been served on the in person, unless the Court otherwise directs.

(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.

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

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

¹ Subs. by the Code of civil Procedure (Second Amdt.) Act, 1926 (22 of 1926) s.2, for “duly appointed to act”.

² Subs. by the Code of civil Procedure (Second Amdt.) Act, 1926 (22 of 1926), s.2, for the original rule-4.

(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.]

5. Service of process on pleader: 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.

6. Agent to accept service:- (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.

(2). Appointment to be in writings and to be filed in Court: 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

1. Suit to be commenced by plaintiff:- (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 Orders VI and VII, so far as they are applicable.

2. Register of suits:- 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

1. Summons:- (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.

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

3. Court may order defendant or plaintiff to appear in person:- 1 Where the Court sees reason to require the 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.

4. No party be ordered to appear in person unless resident within certain limits: 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-sixth 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.

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

6. Fixing day for appearance of defendant: 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.

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

8. On issue of summons for final disposal defendant to be directed to produce his witnesses: Where the summons is for the final disposal of t shall also direct the defendant to produce, on the day his appearance, all witnesses upon whose evidence he I rely in support of his case.

Service of Summons

9. Delivery or transmission of summons for service:- (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.

(3) Unless the Court otherwise directs, the proper officer or an officer authorized by him in this behalf shall cause the service of summons and return it to the Court within fifteen days of issue of summons.

10. Mode of service: 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.

¹[10-A. Service by post:- (1) simultaneously, with the issue of summons under rule 9, there shall be sent, unless to the defendant, by registered other copy of the summons provided in rule 10.

(2) An acknowledgement purporting to be signed by the defendant of the receipt of the registered communication or an endorsement by a postal employee that the defendant refused to take delivery of the same shall be deemed by the Court issuing the summons to be prima facie proof of service of summons.]

11. Service on sue of defendants: Save as otherwise prescribed, defendants than one, service of the summons each defendant.

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

13. Service on agent by whom defendant carries on business: -(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 works 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.

14. Service on agent in charge in suits for immovable property: Where in a suit to obtain relief respecting, or compensation for wrong to, immovable 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.

15. Where service may be on male member of defendant's family:- Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

¹ Rule 10-A ins. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

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

16. Person served to sign acknowledgement: 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.

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

18. Endorsement of time and manner of service: 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.

19.Examination of serving officer: 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.

20.Substituted service:-(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 for service of the summons by-

- (a) affixing a copy of the summons at 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
- (b) any electronic device of communication which may include telegram, phonogram, telex, fax, radio and television; or
- (c) urgent mail service or public courier services; or
- (d) beat of drum in the locality where the defendant resides; or

- (e) publication in press; or
- (f) any other manner or mode as it may think fit:

Provided that the Court may order the use of all or any of the aforesaid manners and modes of service simultaneously.

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

(3) Where service substituted, time for appearance to be fixed: 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 which shall not ordinarily exceed fifteen days.

21. Service of summons where defendant resides within jurisdiction of an other Court: A summons may be sent by the Court by which it is issued, whether within or without the Province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Service within Presidency towns of summons issued by Courts outside. Omitted by the A. O., 1949.

23. Duty of Court to which summons is sent: The Court to which a summons is sent under rule 21 ¹* * *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 in a prison, the otherwise to the defendant.

25. Service where defendants resides out of Pakistan and has no agent: Where the defendant resides out of ²[Pakistan] and has no agent in [Pakistan] empowered to accept service, the summons shall ³[except in the cases mentioned in rule 26-A] 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.

26. Service in Foreign territory through Political; Agent or Court: Where: -

(a) In the event of any foreign ⁴[or extra-provincial jurisdiction vested in the ⁵[Federal Government]], a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

¹ The words and figures "or rule 22" omitted by A.O., 1949.

² Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A.O., 1949, for "British India".

³ Ins. by the Code of Civil Procedure (Amdt.) Act, 1950 (68 of 1950), s.2 (with effect from the 1st September, 1951).

⁴ Subs. by a.O., 1949, for "jurisdiction vested in His Majesty or in [the Central Govt. or the Crown Representative]". The words in crotchet had been subs., for "the G.G in C." by A.O., 1937.

⁵ Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government".

¹[(b) ²[the Provincial Government] has, by notification in the ³[official Gazette], declared⁴, in respect of any Court situate in any such territory and not established or con-wined in the exercise of any such jurisdiction as aforesaid that service by such Court of any summons ⁵[issued under this Code by a Court of the Province shall be deemed to be valid service,

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

¶[26-A. Service on civil public officer or on servanty of railway company or local authority in India: where the defendant is a servant (not belonging to the military, naval or air forces) of any Government in India, or civil public a servant of a railway company or local authority in India, the officer or on summons together with a copy of it to be retained by the defendant shall be sent, with a request that it may be served on the defendant.

(a) In the case of a defendant serving in connection with the affairs of the Government of India or a servant of a Railway in India, to the Secretary to the Government of India in the Ministry of Home Affairs, and

(b) in the case of a defendant serving in connection with the affairs of any other Government in India, or in the case of a servant of a local authority in India, to the Home Secretary to that Government or, as the case may be to the Home Secretary to the Government in whose territories the local authority has its jurisdiction.

27. Service on civil public officer or on servant of railway company or local authority: Where the defendant is a public officer (not belonging to ⁷[the armed forces of Pakistan] ⁸* * *), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send if for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Service on soilders, sailors or airmen: Where the defendant is a soldier, ⁹[sailor] ¹⁰[or airman] the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

¹ Subs. by the Second Repealing and Amending act, 1914 (17 of 1914), s.2 and First Sch., for the original cl. (b).

² Subs. by A.O., 1937, for "the G.G. in C."

³ Subs. ibid., for "Gazette of Inda".

⁴ Service by any Civil Court in the Federation of Malaya, of any summons issued under the Code of Civil Procedure by a Court of the Chief Commissioners' Provinces of Baluchistan and Karachi, shall be deemed to be valid service, see Gaz. Of P., dated the 29th February, 1952 Pt. I, p. 144, and ibid., dated the 14th March, 1952, Pt. IIA, p. 60, see also footnote to s. 29, supra.

⁵ Subs. by A.O., 1937, for "issued by a Court under this Code".

⁶ 26A ins. by the Code of Civil Procedure (Amdt.) Act, 1950 (68 of 1950), s.3 (with effect from the 1st September, 1951).

⁷ Subs. by A.O., 1961, Art 2 and Sch. (with effect from the 23rd March, 1956), for "His Majesty's military, [naval or air] forces". The words in crotches had been subs. by the Repealing and Amending Act, 1927 (10 of 1927), s.2 and 1st Sch., "or naval".

⁸ The words "or his Majesty's Indian Marine Service" omitted by the Amending Act, 1934 (35 of 1934), s.2 and Sch.

⁹ Isn. Ibid.

¹⁰ Ins. by Act 10 of 1927, s.2 and 1s Sch.

29. Duty of person to whom summons is delivered or sent for service: (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 acknowledgement of the defendant, and such signature shall be deemed to be evidence of 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. Substitution of letter for summons: (1) The Court may, notwithstanding anything herein before 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.

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

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

ORDER VI

PLEADINGS GENERALLY

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

2. Pleading to state material facts and not evidence: 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.

3. Forms of pleading: 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.

4. Particulars to be given where necessary: In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful 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.

5. Further and better statement or particulars: A further and better statement of 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.

6. Condition precedent: 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.

7. Departure: 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.

8. Denial of contract: 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.

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

10. Malice knowledge etc: 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.

11. Notice: 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.

12. Implied contract or relation: 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.

13. Presumption of law: 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).

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

15. Verification of pleadings: (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified ¹[on oath or solemn affirmation] 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.

(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

(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. Striking out pleadings: 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.

17. Amendment of pleadings: 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.

18. Failure to amend after order: 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.

¹ Ins. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

ORDER VII PLAINT

1.Particulars to be conatined in plaint: The plaint shall contain the following particulars:-

- a) the name of the Court in which the suit is brought;
- b) the name, description and place of residence of the plaintiff;
- c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- e) the facts constituting the cause of action and when it arose;
- f) the facts showing that the Court has jurisdiction;
- g) the relief which the plaintiff claims;
- h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees so far as the case admits.

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

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.

3. Where the subject-matter of the suit is immovable property:- Where the subject-matter of the suit is immovable 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.

4. Where plaintiff sues as represntatives: 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.

5.Defendant`s interests and liability to be shown: 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.

6. Ground of exemption from limitation law: 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.

7. Relief to be specifically stated: 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 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.

8. Relief founded on separate grounds: 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.

9. Procedure of admitting plaint: ¹[(1)The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it.

(1A) The plaintiff shall present with his plaint –

- a) As many copies on plain paper of the plaint as there are defendants, plus two extra copies, 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; and
- b) Draft forms of summons and fees for service thereof

2. Concise statements: 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.

10. Return of plaints:- (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) Procedure of returning plaints: 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.

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the original sub-rule (1).

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

- a) where it does not disclose a cause of action:
- b) where the relief claimed is under-valued, 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. Procedure on rejecting plaint: Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

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

Documents relied on in Plaint

14. Production of document on which plaintiff sues:- (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.

(2) List of other documents: 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.

15. Statement in case of documents not in plaintiff's possession or power: 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.

16. Suits on lost negotiable instruments: 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.

17. Production of shop book:- (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned: 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.

18 – Inadmissibility of document not produced when plaint filed: (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.

¹[19. Address to be filed with plaint:- (1) Every plaint or original petition shall be accompanied by a proceeding giving an address at which service of notice, summons or other process may be made on the plaintiff or petitioner.

(2) Plaintiffs or petitioners subsequently added shall immediately on being so added file a proceeding of this nature.

(3) The address filed under this rule shall be entered in the Register of suits maintained under Order IV, rule 2.

20. Nature of address to be filed: An address for service filed under the preceding rule shall be within the local limits of the District Court within which the suit or petition is filed, or of the District Court within which the party ordinarily resides.

21. Consequences of failure to file address: Where a plaintiff or petitioner fails to file an address for service, he shall be liable to have his suit dismissed or his petition rejected by the Court suo motto or any party may apply for an order to that effect and the Court may make such order as it thinks just.

22. Procedure when party not found at the place of address: (1) Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice, summons or other process can be served is present, a copy of the notice, summons or other process shall be fixed to the outer door of the house.

(2) If, on the date fixed, such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the said address by registered post, and such service shall be deemed to be as effectual as if the notice, summons or other process had been personally served.

¹ Rules 19 to 26 added by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

23. Service on pleader: Where a party engages a pleader, notices summons or other processes for service on him shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the address for service given by the party.

24. Change of address: A party who desires to change the address for service given by him as aforesaid shall file a verified petition, and the Court may direct the amendment of the record accordingly. Notice of such petition shall be given to such other parties to the suit as the Court may deem it necessary to inform, and may be either served upon the pleaders for such parties or be sent to them by registered post, as the Court thinks fit.

25. Service by other modes: Nothing in these rules shall prevent the Court from directing the service of a notice, summons or other process in any other manner, if for any reasons, it thinks fit to do so.

26. List of legal representatives of Plaintiff:- (1) In every suit of the nature referred to in rule 3, Order XXII, the plaint shall be accompanied by a statement giving -

(a) the names and addresses of the persons who, in the event of the death of the plaintiff, may be made a party as his legal representatives;

(b) the name and address of the person who, in the event of the death of the plaintiff, shall intimate such fact to the Court, furnish the Court with the names, particulars and addresses of the legal representatives of the plaintiff and make an application for the legal representatives to be made a party.

(2) A plaintiff may at any time -

(a) file in the Court an amended list, of his presumptive legal representatives;

(b) nominate another person, in the place of the person nominated under clause (b) of sub-rule (1), for the purposes of that clause.

(3) A nomination made under clause (b) of sub-rule (1) shall, unless varied under clause (b) of sub-rule (2), remain in force throughout the pendency of the suit and any proceedings arising therefrom, including appeal, revision and review.]

ORDER VIII

WRITTEN STATEMENT AND SET-OFF

1. Written statement: The defendant shall at or before the first hearing or within such time as the Court may permit, permit, present a written statement of his defence[:]¹

²[Provided that the period allowed for filing the written statement shall not ordinarily exceed ³[thirty] days.]

2. New facts must be specially pleaded: 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 raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. Denial to be specific: 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.

4. Evasive denial: 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 pay thereof, or else set but 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.

5. Specific denial: 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. Particular of set off to be given written statement:- (1) Where in 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.

(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 judgement in respect both of the original claim and of the

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch. For full-stop.

² Proviso added ibid.

³ Subs. by Act, XIV of 1994. S.11.

set-off: but this shall not effect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(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 administrations 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 parts of the effects from C. In a suit for the purchase money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

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

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

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs.1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so for as soon as A recovers both sums as 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 with the partnership firm of B and C Rs.1000. 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. Defence or set off founded on separate grounds: 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.

8. New ground of defence: 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.

9. Subsequent Pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

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

¹[11. Address for service:- (1) Every party, whether original, added or substituted, who appears in any suit or other proceeding, shall, on or before the date fixed in the summons, notice or other process served on him, file in Court a proceeding stating his address for service.

(2) Such address shall be entered in the Register of suits to be maintained under Order, IV rule 2.

(3) Rules 20, 23, 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under this rule.

12. Consequences of failure to file address:- (1) Where a party fails to file address for service as provided in the preceding rule, ²["the court may direct him to file such address and if he fails to do so after giving him opportunity to file address"], he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended.

(2) The Court may pass an order under sub-rule (1) suo motu or on the application of any party.

13. Lists of legal representatives of defendants:- (1) In every suit of the nature referred to in rule 4, Order XXII, the written statement shall be accompanied by a statement giving -

(a) the names and addresses of the persons who, in the event of the death of the defendant, may be made a party as his legal representatives;

(b) the name and address of the person, who in the event of the death of the defendant, shall intimate such fact to the Court, furnish the Court with the names, particulars and addresses of the legal representatives of the defendant and make an application for the legal representatives to be made a party.

(2) A defendant may at any time -

¹ Rules 11, 12 and 13 added by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

²Added by SRO 579(1)/2014, dated : 18-06-2014

a) file in the Court an amended list of his presumptive representatives;

b) nominate another person, in the place of the person nominated under clause (b) of sub-rule (1) for the purposes of that clause.

(3) A nomination made under clause (b) of sub-rule (1) shall, unless varied under clause (b) of sub-rule (2), remain in force throughout the pendency of the suit and any proceedings arising therefrom, including appeal, revision or review.

ORDER IX

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

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

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

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

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

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

¹ Subs. by the Code of Civil Procedure (Amdt.) Act, 1920 (24 of 1920), s.2, for the original sub-rule (1).

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 -

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

(a) When summons duly served: if it is proved that the summons was duly served, the Court may proceed ex parte ¹[and pass decree without recording evidence].

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

(c) When summons served , byt not in due time: 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.

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

8. Procedure where defendant only appears: Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

¹ Ins. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

9. Decree against plaintiff by default bars fresh suit: (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.

¹(3) The provisions of section 5 of the Limitation Act 1908 (IX of 1908), shall apply to applications under sub-rule (1).

10. Procedure in case of non-attendance of one or more of several plaintiff: 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.

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

12. Consequences of non-attendance, without sufficient cause shown of party ordered to appear in person: 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 Decree Ex Parte

²**[13. Setting aside decree ex-parte against defendant: (1)]** In any case in which a decree is passed ex parte against a defendant he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also[:]³

¹ New sub-rule (3) added by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s. 14.

² Rule 13 re-numbered as sub-rule (1) of that rule by the Code of Civil Procedure (Amdt.) Ordinance, 1980 (10 of 1980), s. 14.

³ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s. 2 and Sch., for full-stop.

¹[Provided further that no decree passed ex parte shall be set aside merely on the ground of any irregularity in the service of summons, if the Court is satisfied for reason to be accorded, that the defendant had knowledge of the date of hearing in sufficient time to appear on that date and answer the claim.

²[(2) The provisions of section 5 of the Limitation Act 1908 (X of 1908), shall apply to applications under sub-rule (1).

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

ORDER X EXAMINATIONS OF PARTIES BY THE COURT

1. Ascertainment whether her allegations in pleadings are admitted or denied: 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.

²**[1.A** The Court may adopt any lawful procedure not inconsistent with the provisions of this Code to--

- (i) Conduct preliminary proceedings and issue orders for expediting processing of the case;
- (ii) issue, with the consent of parties, commission to examine witnesses, admit documents and take other steps for the purpose of trial;
- (iii) adopt, with the consent of parties, any alternative method of dispute resolution including mediation, conciliation or any such other means.]

2. Oral examination of party or companion of party: 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 ³[shall] be

¹ Proviso added ibid.

² Sub-rule (2) added by Ord. 10 of 1980, s. 14.

³ Subs by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and sch., for full stip.

³ Ins. by Ord. 34 of 02, S.3.

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.

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

4. Consequence of refusal or inability of pleader to answer: (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI

DISCOVERY AND INSPECTION

1. Discovery of interrogatories: 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 any order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. Particular interrogatories to be submitted: 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.

3. Costs of interrogatories: 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.

4. Forms of interrogatories: Interrogatories shall be in Form No.2 in Appendix C with such variations as circumstances may require.

5. Corporations: 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.

6. Objections to interrogatories by answer: Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona 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.

7. Setting aside and striking out interrogatories: 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.

8. Affidavit in answer filing: Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

9. Forms of affidavit in answer: An affidavit in answer to interrogatories shall be in Form No.3 in Appendix C, with such variations as circumstances may require.

10. No expectations to be taken: No exception 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.

11. Order to answer or answer further: 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 viva voce examination, as the Court may direct.

12. Application for discovery of documents: 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 brought 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.

13. Affidavit of documents: 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.

14. Production of documents: 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.

15. Inspection of documents referred to in pleadings or affidavits: 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 the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

16. Notice to produce: 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.

17. Time for inspection when notices given: 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.

18. Order for inspection: (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 the 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.

19 Verified copies:- (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 stated that in the belief of the deponent the party against whom the application is made has, or has at sometime had, in his possession or power the document or documents specified I the application, and that they relate to the matters in question in the suit, or to some of them.

20. Premature discovery: 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.

21. Non-compliance with order for discovery: 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 defend, 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.

22. Using answers to interrogatories at trial: 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.

23. Order to apply to minors: 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

1. Notice of admission of case: 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.

2. Notice to admit documents: 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.

3. Form of notice: A notice to admit documents shall be in Form No.9 in Appendix C, with such variations as circumstances may require.

4. Notice to admit facts: 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.

5. Forms of admission: 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.

6. Judgment on admissions: Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just.

7. Affidavit of signature: An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents of facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

8. Notice to produce documents: 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. Costs: 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.

ORDER XIII

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

1. Documentary evidence to be produced at first hearing: (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.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

¹[(3) On production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or, as the case may be denial.]

2. Effect of non-production of documents: 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.

3. Rejection of irrelevant or inadmissible documents: The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the ground of such rejection.

4. Endorsement on documents admitted in evidence: (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:-

¹Added by Act XIV of 1994, S.11.

- (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 initialed 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 initialed by the Judge.

5. Endorsements on copies of admitted entries in books, accounts and records: (1) Save in so far as is otherwise provided by the Banker's Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(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.

6. Endorsements on documents rejected as inadmissible in evidence: 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 initialed by the Judge.

7. Recording of admitted and return of rejected documents:- (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.

8. Court may order any document to be impounded: 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.

9. Return of admitted documents:- (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 therefore delivers to the proper officer a certified copy to the 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.

10. Court may send for papers from its own records or from other Courts:- (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

11. Provisions as to documents applied to material objects: 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

1. Framing of issues: (1) Issue 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 the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Issue of law and facts: 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.

3. Materials from which issue may be framed: 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 the either party.

4. Court may examine witnesses or documents before framing issues: 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.

5. Power to amend and strike out issues: (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.

6. Question of fact or law may by agreement be stated in form of issues: Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter, into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue-

- (a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or
- (c) One or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court if satisfied that agreement was executed in good faith, may pronounce judgment: 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

1. Parties not an issue: 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.

2. One of several a defendants not an issue: 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.

3. Parties at issue:- (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.

4. Failure to provide evidence: 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

¹[1. Summons to attend to give evidence or produce documents: - (1) Not later than seven days after the settlement of issues, the parties shall present in Court a ²[certificate of readiness to produce evidence along with] a list of witnesses whom they propose to call either to give evidence or to produce documents.

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the original rule 1.

²Ins. by Act XIV of 1994, S.11.

(2) A party shall not be permitted to call witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission of permission; it shall record reasons for so doing.

(3) On application to the Court or such officer as it appoints in this behalf, the parties may obtain summons for persons whose attendance is required in Court:

Provided that no summons shall be issued for service on a person under rule 8 unless an application in that behalf is made not later than fourteen days prior to the date fixed for the hearing of the suit and the necessary expenses for the summoning of such person are deposited].

2. Expenses of witness to be paid into Court on applying for summons:- (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.

(2) Experts: 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.

(3) Scale of expenses: Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. Tender of expenses to witness: 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.

4. Procedure where insufficient sum paid in:- (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 movable property of the party obtaining the summons; or the Court may discharge the person summoned, without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witness detained more than one day: 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 movable 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.

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

6. Summons to produce document: 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.

7. Power to require persons present in Court to give evidence or produce document: 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.

¹[7-A. Service of summons by parties:- (1) Except where it appears to the Court that a summons under this Order should be served by the Court in the same manner as a summons to a defendant, the Court shall make over for service all summons under this Order to the party applying therefore.

(2) The service shall be effected by or on behalf of such party by delivering or tendering to the witness in person a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

(3) Rules 16 and 18 of Order V shall apply to summons personally served under this rule, as though the person effecting service were a serving officer.

²[8. Service of summons by Courts: Every summons under this Order, not being a summons made over to a party for service under rule 7-A of this Order, shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply thereto.

9. Time for serving summons: 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.

10. Procedure where witness fails to comply with summons:- (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material and that such person has without lawful excuse, failed to attend or to produce the document in

¹ Rule 7A ins. by the Law Reforms Ordinance 1972 (12 of 1972), s.2 and Sch.

² Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the original rule 8.

compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation or at any time afterwards,. The Court may, in its discretion, issue a warrant either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

11. If witness appears attachment may be withdraws: 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.

12. Procedure if fails to appear: The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding ¹[two] thousand rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

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

13. Mode of attachment: 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.

14. Court may of its accord summon as witnesses strangers to suit: Subject to the provisions of this Court as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it is necessary to examine any person other than a party to the

¹ Subs. by Act XIV of 1994, S.11

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.

15. Duty of persons summoned to give evidence or produce documents: 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.

16. When they may depart: - (1) A person so summoned and attending shall unless the Court otherwise directs attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. Application of rules 10 to 13: The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Procedure where witnesses apprehended cannot give evidence or produce document: Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

¹[19. No witness to be ordered to attend in person unless resident within certain limits: A person shall not be asked by a Court to attend in person to give evidence unless he resides at any place in Pakistan.

20. Consequence of refusal of party to give evidence when called on by Court: Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and therein his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Rules as to witnesses to apply to parties summoned: Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the original rule 19.

ORDER XVII ADJOURNMENTS

1. Court may grant time and adjourn hearing: (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. Costs of adjournment: In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Proceed if parties fails to appear on day fixed: 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.

3. Court may proceed notwithstanding either party fails to produce evidence, etc: 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 each default, proceed to decide the suit forthwith.

¹**4. Appearance of parties on the day next after holiday:** Where a suit or proceeding is set down for a day which is a holiday, the parties thereto shall appear in the Court on the day next following that day, or, when two or more successive days are holidays, on the day next following the last of such successive days, and the Court may then either proceed with the suit on such day, or fix some other day thereafter.

5. Appearance of parties on the day when the presiding officer is absent: When on day the presiding officer of the Court is absent by reason of illness or any other cause, the parties to the suit or proceeding set down for that day(notwithstanding the knowledge that the presiding officer would be absent) shall appear in the Court in the Courthouse on that day and the ministerial officer of the Court authorized in that behalf shall hand over to the parties slips of paper specifying the other date fixed for proceeding with the suit or proceeding and signed by him].

¹ Rule 4 and 5 were added by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

ORDER XVIII
HEARING OF THE SUIT AND EXAMINATION OF WITNESSES

1. Right to begin: 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.

2. Statement and production of evidence:- (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

3. Evidence where several issues: Where there are several issues, the burden of proving some of which lies on the other party the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

4. Witnesses to be examined in open Court: 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.

5. How evidence shall be taken in appealable cases: In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

6. When deposition to be interrupted: 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.

7. Evidence under section 138: 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. Memorandum when evidence not taken down by judge: Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

9. When evidence may be taken in English: 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.

10. Any particular question and answer may be taken down: 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.

11. Questions objected to and allowed by Court: 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.

12. Remarks on demeanor of witness: The Court may record such remarks as it thinks material respecting the demeanor of any witness while under examination.

13. Memorandum of evidence in un-appealable cases: 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.

14. Judge unable to make such memorandum to record reasons of his inability:- (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.

(2) Every memorandum so made shall form part of the record.

15. Power to deal with evidence taken before an other Judge:- (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

16. Power to examine witness immediately:- (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his

evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

17. Court may recall and examine witness: 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.

18. Power of Court to inspect: The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

ORDER XIX

AFFIDAVITS

1. Power to order any point to be proved by affidavit: 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 bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. Power to order attendance of deponent for cross examination: - (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.

3. Matters to which affidavit shall be confined: (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 cost of every affidavit which shall unnecessarily set forth matter of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX
JUDGMENT AND DECREE

¹[1. Judgment when pronounced: (1) On completion of evidence, the Court, shall fix a date,. Not exceeding fifteen days, for hearing of arguments of parties.

(2) The Court shall, after the case has been heard, pronounce judgment in open Court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their advocates.]

2. Power to pronounce judgment written by judge`s predecessor: A Judge may pronounce a judgment written but not pronounced by his predecessor.

3. Judgment to be signed: 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,

4. Judgment of Small Cause Courts: (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts: 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.

5. Court to state its decision on each issue: In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

6. Contents of decree: - (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.

7. Date of decree: 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.

¹ Subs. by Act XIV of 1994, S.11.

8. Procedure where Judge has vacated office before signing decree: Where a Judge has vacated office after pronouncing judgment but without signing the decree a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

9. Decree for recovery of immovable property: Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

10. Decree for delivery of movable property: Where the suit is for movable 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.

11. Decree may direct payment by installments:- (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 installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holders, order that payment of the amount decreed shall be postponed or shall be made by installments 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.

12. Decree for possession and mesne profits :-(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

- 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.

13. Decree in administration suit:- (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.

14. Decree in pre-emption suit:- (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 decree that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

b) If and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Decree in suit for dissolution of partnership: 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 as 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.

16. Decree in suits for account between principal and agent: In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not herein-before 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.

17. Special directions as to accounts: 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 prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

18. Decree in suit for partition of property or separate possession of a share therein: Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if 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.

19. Decree when set-off is allowed:- (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.

(2) **Appeal from decree relating to set off:** 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.

20. Certified copies of the judgment and decree to be furnished: Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

ORDER XXI
EXECUTION OF DECREES AND ORDERS
Payment under Decrees

1. Modes of paying money under decree:- (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 [through a bank or by postal money order or evidence by writing signed by the decree- holder or his authorized agent]; or
- c) Otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

2. Payment out of Court to decree holder: - (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.

¹[(3) Any payment not made in the manner provided in rule 1 or any adjustment not made in writing shall not be recognized by the Court executing the decree.

Courts executing Decrees

3. Lands situate in more than one jurisdiction: Where immovable 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.

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the original sub-rule (3).

4. Transfer to Court of Small Causes. *Omitted by the A.O., 1949.*

5. Mode of transfer: 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 Courts. 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.

6. Procedure where Court desires that its own decree shall be executed by another Court: 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.

7. Court receiving copies of decree, etc. to file same without proof: The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof unless the Court for any special reasons to be recorded under the hand of the Judge, requires such proof.

8. Execution of decree or order by Court to which it is sent: Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Execution by High Court of decree transferred by other Court: Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for Execution

10. Application for execution: Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree to or 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.

11. Oral application: (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.

(2) Written application: 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.

12. Application for attachment of movable property not in judgment debtor's possession: Where an application is made for the attachment of any movable 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.

13. Application for attachment of immovable property to contain particulars: Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot-

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Power to require certified extract from Collector's register in certain cases: 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.

15. Application for execution by joint decree holder-(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 interest of the persons who have not joined in the application.

16. Application for execution by transferee of decree: Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder;

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution;

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

17. Procedure on receiving application for execution of decree:- (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, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialed by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application;

Provided that, in the case of 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.

18. Execution in case of cross-decrees: - (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 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 decree 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 Rs1,000. B holds a decree against A for the payment of Rs.1000 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 kRs.1,000 against B. C cannot treat his decree as a cross-decree under this rule.

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

(d) A, B, C, D and E are jointly and severally liable for Rs.1, 000 under a decree obtained by F. A obtains a decree for Rs.100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

19. Execution in case of cross-claims under same decree: 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.

20. Cross-decrees and cross-claims in mortgage suits: The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

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

22. Notice to show cause against execution in certain cases: - (1) Where an application for execution is made -

- a) more than one year after the date of the decree, or
- b) against the legal representative of a party to the decree, ¹[or where an application is made for execution of a decree filed under the provisions of section 44-A the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him:

¹ Ins. by the Code of Civil Procedure (Amdt.) Act, 1937 (8 of 1937), Section 3.

(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.

23. Procedure after issue of notice: (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.

¹[Objection to Execution]

23-A. Deposit of decretal amount, etc: An objection by the judgment-debtor to the execution of a decree shall not be considered by the Court unless -

- a) in case of a decree for the payment of money, he either deposits the decretal amount in Court or furnishes security for its payment; and
- b) in the case of any other decree, he furnishes security for the due performance of the decree]

Process for Execution

24. Process of execution: (1) When the preliminary measures (if any) required by the foregoing rule 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.

25. Endorsement on process: (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.

¹ Rule 23A and heading ins. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

Stay of Execution

26. When Court may stay execution: (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.

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28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to: 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.

Mode of Execution

31. Decree for specific movable property: (1) Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or

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to such person as he appoints to receive delivery on his behalf, or by the detention in [...] prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any), to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made, has been refused, the attachment shall cease.

32. Decree for specific performance for restitution of conjugal rights, or for an injunction: (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 willfully failed to obey it the decree may be enforced ¹[in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in ²[the evil] 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 ³[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 one year if the judgment debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any), to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where 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

¹ Ins. by the Code of Civil Procedure (Amdt.) Act, 1923 (29 of 1923), s.2.

² Omitted by Act. XIV of 1994, s.11.

³ Omitted by Act. XIV of 1994, s. 11.

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.

Illustrations

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.

33. (1) Discretion of Court in executing decrees for restitution of conjugal rights: (1) Notwithstanding anything in rule 32, the Court either at the time of passing a decree¹[against a husband] for the restitution of conjugal rights or at any time afterwards, may order that the decree²[shall be executed in the manner provided in this rule].

(2) Where the Court has made an order under sub-rule (1)^{3***}, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3)The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

34. Decree for execution of document or endorsement of negotiable instruments: (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.

¹ Ins. by the Code of Civil Procedure (Amdt.) Act, 1923 (29 of 1923).

² Subs. *ibid.*, for "shall not be executed by detention in prison".

³ The words "and the decree-holder is the wife" omitted, by the Code of Civil Procedure (Amdt.) Act, 1923 (29 of 1923).

(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 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.

35. Decree for immovable property: (1) Where a decree is for the delivery of any immovable 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 immovable 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.

36. Decree for delivery of immovable property when in occupancy of tenant: Where a decree is for the delivery of any immovable 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 Civil Prison

37. Discretionary power to permit judgment-debtor to show cause against detention in prison: (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 [.....] prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court ¹[shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be [detained in] prison.

²[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

38. Warrant for arrest to direct judgment-debtor to be brought up: Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the cost (if any) to which he is liable, be sooner paid.

³* * * * *

⁴[40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest:

(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 [detained in] prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in [....] prison and shall in that event cause him to be arrested if he is not already under arrest:

¹ Subs. by the Code of Civil Procedure (Amdt.) Act, 1936 (21 of 1936), s.3 for “may”.

² Proviso ins. *ibid*.

³ Subs omitted by Act XIV of 1994, s.11

⁴ Subs. by the Code of Civil Procedure (Amdt.) Act, 1936 (21 of 1936), s.4, for the original rule 40.

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. Examination of judgment-debtor as to his property: Where a decree is for the payment of money the decree-holder may apply to the Court for an order that -

- (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. Attachment in case of decree for rent or mense profits or other matter, amount of which to be subsequently determined: 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.

43. Attachment of movable property, other than agricultural produce, in the possession of the judgment-debtor: Where the property to be attached is movable 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 in custody is likely to exceed its value, the attaching officer may sell it at once.

44. Attachment of agricultural produce Where the property to be attached is agricultural produce, the attachment shall be made 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.

45. Provisions as to agricultural produce under attachment: (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 a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. Attachment of debt share and other property not in possession of judgment debtor: (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 movable 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 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 movable 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 movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (I) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47. Attachment of share in moveables: Where the property to be attached consists of the share or interest of the judgment-debtor in movable 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.

48 Attachment to salary or allowances of public officer or servant of railway company or local authority: -(1) Where the property to be attached is the salary or allowance of a ¹[servant of the State] or a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly installments as Court may direct; and upon notice of the order to such officer as ²[the appropriate Government may by notification in the official Gazette appoint ³[in this behalf,-

- (a) where such salary or allowances are to be disbursed within the local limits to which this Code for the time being extends, the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly installments, as the case may be;

(b)

where such salary or allowances are to be disbursed beyond the said limits, the officer or other person within those limits whose duty it is to instruct the disbursing authority regarding the amount of the salary or allowances to be disbursed shall remit to the Court the amount due under the order, or the monthly installments, as the case may be, and shall direct the disbursing authority to reduce the aggregate of the amounts from time to time to be disbursed by the aggregate of the amounts from time to time remitted to the Court.

¹ The original words "public officer" were first subs. by the Code of Civil Procedure (Amdt.), Act, 1943, (5 of 1943) s.3 and then amended by A.O. , 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read as above.

² Subs. by the Repealing and Amending Act, 1942 (25 of 1942), s. 3 and Second Sch., for "the Central Government or the Provincial Government may by notification in their official Gazette" which had been subs. by A.O. 1937, for "the Govt. may by notification in the Gazette of India or in the local official Gazette, as the case may be."

³ Subs. by the Code of Civil Procedure (Amdt.) Act, 1939 (26 of 1939), s.2, for certain words.

(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 ¹[the appropriate Government 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 ²[the appropriate Government] or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of ³[the revenues of the ⁴[Federal Government] or a Provincial Government or the funds of a railway company carrying on business in any part of ⁵[Pakistan] or local authority in Pakistan; and the appropriate Government or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

⁶[Explanation - In this rule "appropriate Government" means -

- i. as respects any ⁷[person] in the service of the Federal Government, or any servant ⁸*
* * of a "railway or of a cantonment authority or of the port authority of a major port,
the Central Government;

⁹* * * * *

- iii. as respects any other ¹⁰[Servant of the State] or a servant of any ¹¹* railway or local
authority the Provincial Government

¹ Subs. by Act 25 of 1942, for "the Central or the Provincial Govt., as the case may be" which were subs. by A.O., 1937, for "the Govt."

² Subs. by the Repealing and Amending Act, 1942 (25 of 1942), for "the Central Government or the Provincial Government" which was subs. by A.O., 1937, for "the Government"

³ Subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March 1956) for "His Majesty's (Pakistan Revenues)". The words in brackets were subs. by A.O., 1949, for "Indian revenues".

⁴ Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government".

⁵ Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch., (with effect from the 14th October, 1955), for the Provinces and the Capital of the Federation which had been subs. by A.O., 1949, for "British India".

⁶ Explanation added by Act 25 of 1942, s.3 and Second Sch.

⁷ Subs. by the Code of Civil Procedure (Amendment) Act, 1943 (5 of 1973) s.3, for "public officer".

⁸ The words "of a Railway or" omitted by A.O., 1964, Art. 2 and Sch. The asterisk denotes the omission of "Federal" by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁹ Cl. (ii) omitted by A.O., 1949.

¹⁰ The original words "public officer" were first subs. by Act 5 of 1943, s.3 and then amended by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read above.

¹¹ The word "other" omitted by A.O., 1964, Art. 2 and Sch.

49. Attachment of partnership property: -(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.

(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 ¹[Pakistan].

(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 [Pakistan].

(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.

50. Execution of decrees against firm: (1) Where a decree has been passed against a firm execution may be granted -

a) against any property of the partnership;

b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Contract Act. 1972.

(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

¹ Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14 October, 1955), for "the Province and Capital of the Federation" which had been subs. by A.O, 1949, for "British India".

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.

51. Attachment of negotiable instruments: Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Attachment of property in custody of Court of public officer: 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.

53. Attachment of decrees:- (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 of a notice by the Court which passed the decree sought to be executed requesting such other Court to stay the execution of its decree unless and until -

(i). the Court which passed the decree sought to be executed cancels the notice, or

(ii). the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1) or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who

has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(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 also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. Attachment of immovable property: - (1) Where the property is immovable, 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 making any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such a 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.

55. Removal of attachment after satisfaction of decree: 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 immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

56. Order for payment of coin or currency notes to party entitled under decree: 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.

57. Determination of attachment: 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.

Investigation of Claims and Objections

58. Investigation of claims to and objections to attachment of attached property: - (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:

¹[Provided that no such investigation shall be made where it appears to the Court that the claim or objection (whether made before or after the sale) has been designedly or unnecessarily delayed, or was not made within a reasonable time or within one year of the date of the first attachment of the said property in the execution of the said decree, whichever is earlier, unless the claimant or objector -

- a) proves title acquired in good faith and for consideration subsequent to the date of the first attachment;
- b) Proves that his predecessors-in-interest, whether their interest existed at the time of such attachment or was acquired thereafter, fraudulently omitted to make a claim or objection; and.
- c) imp-leads all such predecessors-in-interest, as parties

(2) Postponement of sale: 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.

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the Original Proviso.

¹**59. Evidence to be adduced by claimant:** The claimant or objector must adduce evidence to show that at the date of the attachment he had a title to, or right or interest in, the property attached.

60. Release of property from attachment: Where upon the said investigation the Court is satisfied that the claimant or objector had a title to, or right or interest in, the said property and the said property was not, by reason of such title, right or interest, wholly or partly liable to attachment, the Court shall make an order releasing the property, wholly, or as the case may be, to such extent as it is not so liable, from attachment.

61. Continuance of attachment subject to claim of encumbrance: Where the Court is satisfied that the property is subject to mortgage or charge in favour of some person and thinks fit to continue the attachment, it may do so subject to such mortgage or charge.

62. Questions relating to rights. Etc, of claimant in attached property to be decided by Court: All questions relating to the right title or interest of the claimant or objector in the attached property shall be adjudicated upon and determined by the Court and no separate sit shall lie to establish such title, right or interest.

63. Savings of suits to establish right to attached property. Omitted by the Law Reforms Ordinance, 1972 (XII of 1972), s.2 and Sch

Sale Generally

64. Power to order property attached to be sold and proceeds to be paid to person entitled: 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.

65. Sales by whom conducted and how made: Sale as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. Proclamation of sales by public auction:- (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;

¹ Sbus. Ibid. for the original rules 59-62.

- 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 in-cumbrance to which the property is liable;
- d) The amount for the recovery of which the sale is ordered; and
- e) Every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the 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.

67. Mode of making proclamation: - (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the ¹[official Gazette] or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Time of sale: Save in the case of property of the kind described in the proviso to rule 34, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable 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.

69. Adjournment or stoppage of sale: - (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:

¹ Subs. by A.O., 1937, for "local official Gazette".

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule(1) for a longer period than seven days a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every 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 same.

70. Saving of certain sales: 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.

71. Defaulting purchaser answerable for loss on re-sale: 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.

72. Decree holder not to bid for or buy property without permission:- (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

73. Restrictions on binding or purchase by officer: 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 Movable Property

74. Sale of agricultural products:- (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 maybe offered for the produce.

75. Special provisions relating to growing crops:- (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 and or gathering it.

76. Negotiable instruments and shares in corporations: Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

77. Sale by public auction:- (1) Where movable 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 movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid

the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

78. Irregularity not to vitiate sale, but any person injured may sue: No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

79. Delivery of moveable property debts, and shares:- (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable 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, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. Transfer of negotiable instruments and shares:- (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:-
AB by CD Judge of the Court of (or as the case may be) in a suit by EF against AB.

(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.

81. Vesting order in case of other property: In case of any movable 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.

Sale of Immovable Property

82. What Court may order sales: Sales of immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

83. Postponement of sale to enable judgment debtor to raise amount of decree:- (1) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor the Court may 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 leases or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of or charge on such property.

84. Deposit by purchaser and resale on default:- (1) On every sale of immovable 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 resold.

(2) Where the decree holder is the purchaser and is entitled to set off the purchase-money under rule 12, the Court may dispense with the requirements of this rule.

85. Time for payment in full of purchase money: 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.

86. Procedure in default of payment: 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.

87. Notification on re-sale: Every re-sale of immovable property in default of payment of the purchase-money within the period allowed for such payment shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

88. Bid of co-sharer to have preference: Where the property sold is a share of undivided immovable 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.

89. Application to set aside on sale on deposit: - (1) Where immovable 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 applied under rule 90 to set aside the sale of his immovable 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 judgement-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. Application to set aside on sale on ground of irregularity or fraud: Where any immovable property has been sold in execution of a decree the decree-holder or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud [:]¹

²[Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty per cent of the sum realized at the sale or furnishes such security as the Court may direct.]

¹ Subs. by the Law Reforms Ordinance 1972 (12 of 1972), s.2 and Sch., for full-stop.

² Proviso added *ibid*.

91. Application by purchaser to set aside on ground of judgment debtor having no saleable interest: 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.

92. Sale when to become absolute or be set aside:- (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.

93. Return of purchase-money in certain cases: Where a sale of immovable 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.

94. Certificate to purchaser: Where a sale of immovable 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.

95. Delivery of property in occupancy of judgment-debtor: Where the immovable 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.

96. Delivery of property in occupancy of tenant: 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 judgment debtor has been transferred to the purchaser.

Resistance to Delivery of Possession to Decree-holder Or Purchaser

97. Resistance or obstruction to possession of movable property:- (1) Where the holder of a decree for the possession of immovable 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.

98. Resistance or obstruction by judgment debtor: Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession the Court may also at the instance of the applicant order the judgment-debtor or any person acting at his instigation to be detained in [.....] prison for a term which may extend to thirty days.

99. Resistance or obstruction by bona fide claimant: Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor the Court shall make an order dismissing the application.

100. Dispossession by decree-holder or purchaser:- (1) Where any person other than the judgment-debtor is dispossessed of immovable 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.

101. Bona fide claimant to be restored to possession: 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.

102. Rules not applicable to transferee lite bedente: Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immovable 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.

¹[103. Certain orders conclusive and suit barred: - All questions arising as to title, right or interest in or possession of immovable property between an applicant under rule 97 and the opposite-party or between an applicant under rule 100 and the opposite party shall be adjudicated

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 a.d Sch for the original rule 103.

upon and determined by the Court and no separate suit shall lie for the determination of any such matter.]

ORDER XXII
DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

1. No abatement by party's death if right to sue survives: The death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives: Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiffs 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.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff: - (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiffs alone ¹[, or on receipt of an intimation of the death of such plaintiff from the person nominated by him for that purpose under rule 26, Order VII 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[(2) Where within the time allowed by law no application is made or intimation is given under sub-rule (I), the Court may proceed with the suit and any order made or judgment pronounced in such suit shall notwithstanding the death of such plaintiff have the same force and effect as if it had been made or pronounced before the death took place.]

4. Procedure in case of death of one of several defendants or of sole defendant:- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone ³[, or on receipt of an intimation of the death of such defendant from the person nominated by him for that purpose under rule 13, Order VIII], or a sole defendant or sole surviving defendant dies and the right to sue survives the Court on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

¹ Ins. ibid.

² Sbus. By the Law Reforms Ordinance, 1972 (12 of 1972), s.2, for the original sub-rule (2).

³ Ins. ibid.

¹[(3) When within the time limited by law no application is made or intimation is given under sub-rule (1) the Court may proceed with the suit and any order made or judgment pronounced in such suit shall notwithstanding the death of such defendant have the same force and effect as if it had been pronounced before the death took place.]

²[(4) It shall not be necessary to substitute the legal representatives of any such defendant who has failed to file a written statement or has failed to appear and contest the suit at the hearing; and judgment may in such case be pronounced against the said defendant notwithstanding his death and such judgment shall have the same force and effect as if had been pronounced before his death took place.]

5. Determination of question as to legal representative: 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.

6. No abatement by reason of death after hearing: 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 death and shall have the same force and effect as if it had been pronounced before the death took place.

7. Suit not abated by marriage of female party: - (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.

8. When plaintiff's insolvency bars suit: - (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.

(2) Procedure where assignee fails to continue suit or give security: 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.

¹ Subs. ibidi., for sub-rule (3).

² Sub-rule (4) added ibid.

¹**9. Effect of dismissal:** - (1) When a suit is dismissed under rule 8 no fresh suit shall be brought on the same cause of action.

(2) Any person claiming to be the legal representative of a deceased plaintiff or defendant or the assignee or the receiver in the case of an insolvent [plaintiff may apply to the Court for setting aside any order made or judgment pronounced by it in his absence; and if it is proved that he was prevented by any sufficient cause from continuing the suit or defending the suit as the case may be the Court shall set aside the order or the judgment upon such terms as to costs or otherwise as it thinks fit.]

²[(3) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908) shall apply to applications under sub-rule (2).

10. Procedure in case of assignment before final order in suit: - (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).

11. Application of order to appeals: 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.

12. Application of order to proceedings: Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim: -(1) At any time after the institution of a suit the plaintiff may as against all or any of the defendants withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied -

a) that a suit must fail by reason of some formal defect or

b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for the Original rule 9.

² Sub-rule (3) added by the Civil Procedure (Amdt.) Act, 1990 (4 of 1990), s.2.

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 authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. Limitation law not affected by first suit: 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.

3. Compromise of suit: Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit the Court shall order such agreement compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit.

4. Proceedings in execution of decree not affected: Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV PAYMENT INTO COURT

1. Deposit by defendant of amount in satisfaction of claim: 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.

2. Notice of deposit: 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.

3. Interest on deposit not allowed to plaintiff after notice: 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.

4. Procedure where plaintiff accepts deposit as satisfaction in part: - (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.

(2) Procedure where he accepts it as satisfaction in full: 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 plain being filed A pays Rs.100 into Court and disputes only his liability to pay the remaining Rs.50. B accepts the Rs.100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV SECURITY FOR COSTS

1. When security for costs may be required from plaintiff:- (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 Pakistan and that such plaintiff does not or that no one of such plaintiffs does possess any sufficient immovable property within Pakistan 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) Residence out of Pakistan: Whoever leaves Pakistan 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 Pakistan 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 immovable property within Pakistan.

2. Effects of failure to furnish security:- (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, If it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI COMMISSIONS

Commissions to Examine Witnesses

1. Cases in which Court may issue commission to examine witness: 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.

2. Order for commission: 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.

3. Where witness resides within Court's jurisdiction: 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.

4. Persons for whose examination commission may issue:- (1) Any Court may in any suit issue a commission for the examination of -

a) any person resident beyond the local limits of its jurisdiction;

b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

c) ¹[any person in the service of the ²[State]] who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Commission or request to examine witness not within Pakistan: Where any Court to which application is made for the issue of commission for the examination of a person residing at any place not within Pakistan is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to commission: Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with depositions of witnesses: 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.

8. When deposition may be read in evidence: Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered unless-

a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a ³[person in the service of the ⁴[State]] 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.

¹ Subs. by A.O. 1937, for "any civil or military officer of the Govt."

² Subs. by A.O. 1961, Art. 2 and Sch. For "Crown" (with effect from the 23rd March, 1956).

³ Subs. by A.O., 1937 for "civil or military officer of the Govt."

⁴ Subs. by A.O., 1961, Art. 2 and Sch. For "Crown" (with effect from the 23rd March, 1956).

Commissions for Local Investigations

9. Commission to make local investigation: 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 or 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:

Provided that, where the ¹[Provincial Government] has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner:- (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.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or,

with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(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.

Commission to examine Accounts

11. Commission to examiner adjust accounts: 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.

12. Courts to give Commissioner necessary instructions, proceedings and report to be evidence Court may direct further inquiry:- (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.

¹ Subs. by A.O. 1937, for "L.G."

(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

13. Commission to make partition of immovable property: 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.

14. Procedure of Commissioner:- (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 authorised 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

15. Expenses of Commission to be paid into Court: 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.

16. Powers of Commissioners: 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.

17. Attendance and examination of witnesses before Commissioner:- (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 Pakistan and for the purpose of this rule the Commissioner shall be deemed to be a civil Court.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. Parties to appear before Commissioner:- (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

¹[Commissions issued at the instance of Foreign Tribunals.

19. Cases in which High Court may issue commission to examine witness:- (1) If a High Court is satisfied -

- a) that a foreign Court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,
- b) that the proceeding is of a civil nature, and
- c) that the witness is residing within the limits of the High Court's appellate jurisdiction.

It may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence 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 ²[Pakistan] and transmitted to the High Court through the [Federal Government], or

¹ Rules 19 to 22 and the heading above them were inserted by the Code of Civil Procedure (Amdt.) Act, 1932 (10 of 1932), s.3.

² Subs. by A.O., 1949, for "India,."

b) by a letter of request issued by the foreign Court and transmitted to the High Court through the ¹[Federal Government], or

c) by a letter of request issued by the foreign Court and produced before the High Court by a party to the proceeding.

20. Application for commission: The High Court may issue a commission under rule 19

a) upon application by a party to the proceeding before the foreign Court or
b) upon an application by a law officer of the Provincial Government acting under instructions from the ²[Provincial Government].

21. To whom commission may be issued: A commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where ^{3****} the witness resides within the local limits of ⁴[the ordinary original civil jurisdiction of the High Court], to any person whom the Court thinks fit to execute the commission.

22. Issue, execution and return of commission and transmission of evidence to foreign Court: 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 ⁵[Federal Government] along with the letter or request for transmission to the foreign Court.

ORDER XXVII

SUITS BY OR AGAINST ⁶[THE GOVERNMENT] OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY

1. Suits by or against Government: In any suit by or against ⁷[the Government], the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

¹ Subs. F.A.O., 1975 Art. 2 and Table. For “Central Government”, which was previously subs. by A.O., 1937, for “G.G. in C.”.

² Subs. by A.O., 1937, for “L.G.”.

³ The words “the High Court is established under the Indian High Courts Act, 1861, or the G. of I. Act, 1915, and” rep., *ibid.*

⁴ Subs. *ibid.*, for “its ordinary original civil jurisdiction”.

⁵ Subs. by F.A.O., 1975, Art. 2 and table, for “Central Government” which was previously subs. by A.O., 1937. for G.G. in C”.

⁶ The original words “the Government were first subs. by A.O., 1937, and then amended by A.O., 1961, Art. 2 and Sch (with effect from the 23rd March, 1956 to read as above.

⁷ The original words “the Secretary of State for India in Council” were first subs. by A.O., 1937 and then amended by A.O., 1961, Art. 2 and Sch (with effect from the 23rd March, 1956), to read as above.

¹2. Person authorized to act for Government: Persons being ex officio or other wise authorised 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 maybe made or done on behalf of ⁵[the Government].

3. Plaints in suits by or against Government: In suits by or ²[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 ³[the appropriate name as provided in section 79, ⁴* * *].

⁵[4. Agent for Government to recive process: The ⁶[Government] pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

5. Fixing of day for appearance on behalf of Government: The Court, in fixing the day for ⁷[the Government] to answer to the plaint, shall allow a reasonable time for the necessary communication ⁸[with the Government] through the proper channel, and for the issue of instructions to the ⁹[Government] pleader to appear and answer on behalf of ¹⁰[the Government] ¹¹* * * and may extend the time at its discretion.

6. Attendance of person able to answer question relatinmg to suit against Government: The Court may also, in any case in which the Government pleader 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.

7. Extension of time enable public officer to make reference to Government: - (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.

¹ For notifi. Under this rule, see Gaz. Of P., 1956, Pt. I, P. 486.

² The original words "against the Secretary of State for India in Council" were first subs by A.O., 1937 and then amended by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read as above.

³ Subs. by A.O., 1937, for the words "The Secretary of State for India in Council".

⁴ The words "or, if the suit is against the Secretary of State," the words "the Secretary of State," omitted by A.O., 1949.

⁵ Subs. by A.O., 1937, for the words "the Secretary of state for Idnia in Council".

⁶ Subs. by A.O., 1961, Art. 2 and Sch. For "Crown" (with effect from the 23rd Marach, 1956).

⁷ See footnote 6 on preceding page.

⁸ The original words "with the Government" were first subs. by A.O., 1937 and tehn amended by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read as above.

⁹ The original words "Governemnt pleader" were first subs. by A.O., 1937

¹⁰ The original words "the said Secretary amended by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read as above.

¹¹ The words "or the Government" omitted by A.O., 1949.

18. Procedure in suits against public officer:- (1) Where ²[the Government] undertakes the defence of a suit against a public officer ³[the Government pleader], upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits. (2) Where no application under sub-rule (1) is made by [the [Government] pleader] on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment otherwise than in execution of a decree.

⁴[8.A. No security to be required from Government or a public officer in certain cases: No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the ⁵[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.

8B. Definitions of “Government” and “Government pleader”: In this Order "Government" and "Government pleader" means respectively-

a) in relation to any suit by or against ⁶* * * the ⁷[Federal Government], or against a public officer in the service of that Government, the Federal Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order:

⁸* * * * *

c) in relation to any suit by or against a Provincial Government or against a public officer in the service of a Province, the Provincial Government and the Government pleader, or such other pleader as the Provincial Government may appoint, whether generally or specially for the purposes of this Order.]

¹ For notifi. Under these rules, see Gaz. Of P. 1956, Pt. 1, p. 486.

² See foot-note 5 on page 572, supra.

³ The original words “the Government pleader” have successively been amended by A.O., 1937, and A.O., 1961, Art. 2 and Sch. (with effect the 23rd March, 1956), to read as above.

⁴ Rules 8A and 8B were ins. by A.O., 1937.

⁵ Subs. by A.O., 1961, Art. 2 and Sch. For “Crown” (with effect from the 23rd march, 1956).

⁶ The words “the Secretary of State or “omitted by A.O., 1949.

⁷ Subs. by F.A.O., 1975, Art. 2 and Table, for “Central Government”.

⁸ Cl. (b) omitted by A.O., 1949.

**¹[ORDER XXVIA
SUITS INVOLVING ²[ANY SUBSTANTIAL QUESTION AS TO THE
INTERPRETATION OF CONSTITUTIONAL LAW]**

1. Notice to the Advocate General: In any suit in which it appears to the Court that [any substantial question as to the interpretation of constitutional law is involved, the Court shall not proceed to determine the question until after notice has been given to the ³[Attorney-General for Pakistan] if the question of law concerns the Central Government and to the Advocate-General of the Province if the question of law concerns a Provincial Government.

2. Court may add Government as party: The Court may at any stage of the proceedings order that the ⁴[Federal Government] or a provincial Government shall be added as a defendant in any suit involving any substantial question as to the interpretation of constitutional law if the Attorney-General for Pakistan or the Advocate-General of the Province as the case may be, whether upon receipt of notice under rule 1, or otherwise applies for such addition and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

3. Costs when Government added as party: Where under rule 2 Government is added as a defendant in a suit ⁵[the Attorney-General,] the Advocate General or the Government shall not be entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any special reason otherwise orders .

4. Application of Order: In the application of this Order to appeals the word “ defendant” shall be held to include a respondent and the word “suit” an appeal.

**ORDER XXVIII
SUITS BY OR AGAINST MILITARY ⁶[OR NAVAL] MEN ⁷[OR AIRMEN]**

1. Officers, soldiers, sailors or airmen who cannot obtain leave may authorize any person to sue or defend for them: - (1) Where any officer, ⁸[soldier, sailor or airman] actually ⁹[in the service of the State] in ¹⁰[such] capacity is a party to a suit, and cannot obtain leave of

¹ Order XXVIA ins. by the Code of Civil Procedure (Amdt.) Act, 1942 (23 of 1942), s.2

² Subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), for “any such question as is referred to in sub-section (1) of section 205 of the Government of India Act, 1935” which had been subs. by A.O., 1949, for “a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder”.

³ Subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), for “Advocate-General of Pakistan” which had been subs. by A.O., 1949, for “Advocate-General of India”.

⁴ Subs. by F.A.O., 1975, Art. 2 and Table, for “Central Government”.

⁵ Ins. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁶ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

⁷ Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s.2 and 1st Sch.

⁸ The words “soldier or airman” were subs. by Act, 10 of 1927, s.2 and 1st Sch., for the words “or soldier” and the words “sailor” was ins. by Act 35 of 1934, s.2 and Sch.

⁹ Subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), for “serving under the Crown” which had been subs. by A.O. 1937, for “serving the Govt.”

¹⁰ Subs. by Act 35 of 1934, s.2 and Sch., for “a military or air-force” The words “or air-force” had been ins. by Act 10 of 1927, s.2 and 1st Sch.

absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer, or he next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman is serving in military 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 counter sign the authority which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer, ¹[soldier, sailor or airman] by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation - In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, ²[ship] detachment or depot to which the officer, soldier, sailor or airman belongs.

2. Person to authorised may act personally or appoint pleader: Any person authorised by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

3. Service on person so authorised or on his pleader to be good service: Processes served upon any person authorised by an officer, soldier, sailor or airman under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX

SUITS BY OR AGAINST CORPORATIONS

1. Subscription and verification of pleading:. 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.

2. Service on corporation: 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

¹ The words "soldier or airman" were subs. by the Repealing and Amending Act, 1927 (10 of 1927), s.2 and 1st Sch., for the words "or soldier" and the word "sailor" was ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

² Ins. by Act 35 of 1934, s.2 and Sch.

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.

3. Power to require personal attendance of officer of corporation: 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

1. Suing of partner in name of firms:- (1) Any two or more persons claiming or being liable as partners and carrying on business in ¹[Pakistan] may sue or be sued in the name of 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.

2. Disclosure of partners name:- (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 a 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.

3. Service: Where persons are sued as partners in the name of their firm, the summons shall be served either -

¹ See footnote 4 on page 544, supra.

a) upon any one or more of the partners, or

b) at the principal place at which the partnership business is carried on within ¹[Pakistan] 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 Pakistan:

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 Pakistan whom it is sought to make liable.

4. Right of suit on death of partner: - (1) Notwithstanding anything contained in section 45 of the Contract Act, 1872, 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.

5. Notice in what capacity served: 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.

6. Appearance of partners: 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 names of the firm.

7. No appearance except by partners: 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.

8. Appearance under protest: 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.

¹ See footnote 4 on page 544, supra.

9. Suits between co-partners: 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.

10. Suit against person carrying on business in name other than his own: 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

1. Representation of beneficiaries in suits concerning property vested in trustees etc: 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 person 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.

2. Joinder of trustees, executors and administration: 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 ¹[Pakistan] need not be made parties.

3. Husband of married executrix not to be join: 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.

ORDER XXXII
SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend: 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.

¹ See footnote 4 on page 544, supra.

2. Where suit is instituted without next friend plaintiff to be taken off the file: - (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaintiff taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(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. Guardian for the suit to be appointed by Court for minor defendant:- (1) Where the defendant is a minor, the Court on being satisfied of the fact of his minority shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose case the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under the sub-rule.

¹[(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceedings in the execution of a decree.

4. Who may act as next friend or be appointed guardian for the suit: - (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 of the minor and that he is not, in the case of a next friend, a defendant or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

¹ Sub-section (3) ins. by the Code of Civil Procedure (Third Amdt.) Act, 1937 (16 of 1937), s.2.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. Representation of minor by next friend or guardian for the suit: - (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.

6. Receipt by next friend or guardian for the suit of property under decree for minor:- (1) A next friend or guardian for the suit shall not, without the leave of the Court receive any money or other movable 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 movable property the Court shall if it grants him leave to receive the property require such security and give such directions as will in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. Agreement or compromise by next friend or guardian for the suit:- (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.

8. Retriemnet of next friend:- (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.

9. Removal of next friend: - (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 ¹[Pakistan], 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.

10. Stay of proceedings on removal etc, of next friend: - (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.

11. Retirement, removal or death of guardian for the suit: - (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.

12. Course to be followed by minor plaintiff or applicant on attaining majority: - (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.

¹ See foot-note 4 on page 5'4, supra.

(3) The title of the suit or application shall in such case may be corrected so as to read henceforth:-

"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 apposite-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 any notice to the next friend.

13. When minor co-plaintiff attainig majority desires to repudiate suit: - (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.

14. Unreasonable or imporper suit: - (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. Application of rules to porsons of unsound mind: 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 in inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

¹[**16. Certain laws not to be affected:** Nothing in this Order shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.]

**ORDER XXXIII
SUITS BY PAUPERS**

1. Suits may be instituted in forma pauperis: Subject to the following provisions, any suit may be instituted by a pauper.

Explanation:- A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed when he is not entitled to property worth ²[one thousand) rupees other than his necessary wearing apparel and the subject matter of the suit.

2. Contents of application: Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits a schedule of any movable or immovable property belonging to the applicant with the estimated value thereof shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Presentation of application: Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

4. Examination of application: - (1) Where the application is in proper form and duly presented the Court may if it thinks fit examine the applicant or his agent when the applicant is allowed to appear by agent regarding the merits of the claim and the property of the applicant.

(2) If presented by agent, Court may order applicant to be examined by commission: Where the application is presented by an agent, the Court may if it thinks fit order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. Rejection of application: The Court shall reject an application for permission to sue as a pauper -

¹ Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Sch. For the original rule 16, which was previously amended by various enactments from time to time.

² Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for "one hundred".

- a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
- b) where the applicant is not a pauper, or
- c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- d) where his allegations do not show a cause of action, or
- e) where he has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in such subject matter.

6. Notice of day for receiving evidence of applicants pauperism: Where the Court sees no reason to reject the application on any of the grounds stated in rule, 5, it shall fix a day (of which at last ten days clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

7. Procedure at hearing: - (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party and may examine the applicant or his agent and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Procedure if application admitted: Where the application is granted it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that plaintiff shall not be liable to pay any court-fee (other than fee payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

9. Dispaupering: The Court may on the application of the defendant or of the Government pleader of which seven days clear notice in writing has been given to the plaintiff order the plaintiff to be dispaupered-

- a) if he is guilty of vexatious or improper conduct in the course of the suit;
- b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject matter.

10. Costs where pauper succeeds: Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the ¹[Provincial Government] from any party ordered by the decree to pay the same, and shall be a first charge on the subject matter of the suit.

11. Procedure where pauper fails: Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed, -

a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court fee or postal charges (if any) chargeable for such service, or

b) because the plaintiff does not appear when the suit is called on for hearing.

The Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

²**[11.-A. Procedure where pauper suit abates:** Where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff the Court shall order that the amount of court fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Provincial Government from the estate of the deceased plaintiff.

12. Provincial Government may apply for payment or court-fees: The ³[Provincial Government] shall have the right at any time to apply to the Court to make an order for the payment of court fees under ⁴[rule 10 rule 11 or rule 11-A].

13. Provincial Government to be deemed a party: All matters arising between the Provincial Government and any party to the suit under rule 10, rule 11 ⁵[rule 11A] or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

⁶**[14. Recovery of amount of court-fees:** Where an order is made under rule 10, rule 11 or rule 11A the court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who may without prejudice to any other mode of recovery recover the amount of court fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

¹ Subs. by A.O., 1937, for "Govt."

² Rule 11A ins. by the Code of Civil Procedure (Second Amdt.) Act, 1942 (24 of 1942), s.2.

³ Subs. *ibid.*, for the words and figures "or rule 11".

⁴ Subs. *ibid.*, for the words and figures "rule 11".

⁵ The word, figures and letter "rule 11A" ins. *ibid.*

⁶ Subs. by Act 24 of 1942, s.2 for the Original s. 14.

15. Refusal to allow applicant as pauper to bar subsequent application of like nature:

An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs, (if any) incurred by the Provincial Government and by the opposite party in opposing his application for leave to sue as a pauper.

16. Costs: The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

ORDER XXXIV
SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

1. Prties to suit for foreclouser, sale and redemption: Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation: - A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

¹[2. Preliminary decree in foreclouser suit: In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree -

a) Ordering that an account be taken of what was due to the plaintiff at the date of such decree for –

i. principal and interest on the mortgage,

ii. the costs of suit, if any, awarded to him and

iii. other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security together with interest thereon; or

b) declaring the amount so due at that date; and

c) directing -

i). that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b) as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11 the plaintiff shall deliver up to the defendant or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant at his cost free from the mortgage and from all encumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title by those under whom he claims, and shall also if necessary put the defendant in possession of the property; and

¹ Rules 2 to 8 were subs. by the Transfer of Property (Amdt.) Supplementary aCt, 1929 (21 of 1929), s.4 for the original rules.

ii). that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges expenses and interest.

(3) Where in a suit for foreclosure, subsequent mortgagees or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No.9 or Form No.10, as the case may be of Appendix D with such variations as the circumstances of the case may require.

¹3. Final decree in foreclosure suit: - (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall on application made by the defendant in this behalf, pass a final decree -

- a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree, and if necessary, -
- b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree, and also if necessary
- c) ordering him to put the defendant in possession of the property.

(2) where payment in accordance with sub-rule (1) has not been made the Court shall on application made by the plaintiff in this behalf, pass a final declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

¹ See foot-note 1 on page 522, supra.

(3) On the passing of a final decree under sub-rule (2) all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

¹4- Preliminary decree in suit for sale: (1) In a suit for sale if the plaintiff succeeds the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (I) of sub rule (1) of rule 2, and further directing that, in default of the defendant paying as therein mentioned the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Power to decree sale in foreclosure suit: In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds the Court may at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgages or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No.9, form No.,10 or Form No.11 as the case may be of Appendix D with such variations as the circumstances of the case may require.

²5. Final decree in suit for sale: Where on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall on application made by the defendant in this behalf pass a final decree or if such decree has been passed an order -

- a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,
- and if necessary, -

¹ See foot-note 1 on page 522, supra.

² See foot-note 1 on page 522 supra.

- b) ordering him to transfer the mortgaged property as directed in the said decree, and also if necessary,-
- c) ordering him to put the defendant in possession of the property.

(2) where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule the Court shall not pass an order under sub-rule (1) of this rule unless the defendant in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made the purchaser shall be entitled to an order for re-payment of the amount of the purchase-money paid into Court by him, together with a sum equal to five percent thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall on application made by the plaintiff in this behalf pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

¹6. Recovery of balance due on mortgage in suit for sale: Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff the Court, on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

7. Preliminary decree in redemption suit:- (1) In a suit for redemption if the plaintiff succeeds the Court shall pass a preliminary decree-

a) Ordering that an account be taken of what was due to the defendant at the date of such decree for -

- i) principal and interest on the mortgage,
- ii) the costs of suit if any awarded to him and
- iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security together with interest thereon; or

b) declaring the amount so due at that date; and

c) directing -

- i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under

¹ See foot-note 1 on page 522, supra.

clause (a) or from the date on which such amount is declared in Court under clause (b) as the case may be and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10 together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up the plaintiff or to such person as the plaintiff appoints all documents in his possession or power relating to the mortgaged property and shall if so required re-transfer the property to the plaintiff \at his cost free from the mortgage and from all encumbrances created by the defendant or any person claiming under him, or where the defendant claims by derived title, by those under whom he claims, and shall also if necessary put the plaintiff in possession of the property; and

ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed or the plaintiff fails to pay within such time as the Court may fix the amount adjudged due in respect of subsequent costs charges expenses and interest the defendant shall be entitled to apply for a final decree-

- a) in the case of a mortgage other than a usufructuary mortgage a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale that the mortgaged property be sold or
- b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all rights to redeem the property.

(2) The Court may on good cause shown and upon terms to be fixed by the Court from time to time at any time before the passing of a final decree for foreclosure or sale as the case may be extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs charges, expenses and interest.

18. Final decree in redemption suit:- (1) Where before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order -

¹ See foot-note 1 on page 522, supra.

a) ordering the defendant to deliver up the documents referred to in the preliminary decree,
and if necessary,-

b) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and also if necessary,-

c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him, together with a sum equal to five per cent thereof.

(3) Where payment in accordance with sub-rule (1) has not been made the Court shall on application made by the defendant in this behalf, -

a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and also if necessary ordering the plaintiff to put the defendant in possession of the mortgaged property; or

b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.

¹8.-A Recovery of balance due on mortgage in suit for redemption:- Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court on application by him may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance

9. Decree where nothong is found due or where mortgage has been over paid: Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred

¹ Rule 8A ins. by the Transfer of Property (Amdt.) Supplementary Act, 1919 (21 of 1929), s.5.

to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

¹10. Costs of mortgage subsequent to decree: In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure sale or redemption up to the time of actual payment.

11. Payment of interests: In any decree passed in a suit for foreclosure sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:-

a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage -

i) on the principal amount found or declared due on the mortgage, - at the rate payable on the principal, or where no such rate is fixed, at such rate as the Court deems reasonable,

ii) on the amount of the costs of the suit awarded to the mortgagee, - at such rate as the Court deems reasonable from the date of the preliminary decree, and

iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage money, at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principle, or failing both such rates at nine per cent per annum; and

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable -

i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

ii) on the amount adjudged due to the mortgagee in respect of such further costs charges and expenses as may be payable under rule 10.]

12. Sale of property subject to prior mortgage: Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the

¹ Subs. *ibid.*, s.6, for the original rules 10 and 11.

prior mortgagee, direct that the property be sold free from the same giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

13. Application of proceeds: - (1) Such proceeds shall be brought into Court and applied as follows:-

first in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage and of cost properly incurred in connection therewith.

Thirdly in payment of all interest due on account of the mortgage in consequence whereof the sale was directed and of the cost of the suit in which the decree directing the sale was made;

Fourthly in payment of the principal money due on account of that mortgage; and

Lastly the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882.

14. Suits for sale necessary for bringing mortgaged property to sale: (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882 has not been extended.

¹[15. Mortgages by the deposit of title-deeds and charges: All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act 1882]

¹ Subs. by the Transfer of Property (Amdt.) Supplementary Act, 1929 (21 of 1929), s.7, for the original rule 15.

ORDER XXXV INTERPLEADER

1. Plaintiff in interpleader suits: In every suit of interpleader the plaintiff shall, in addition to other statements necessary for complaints, 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.

2. Payment of thing claimed into Court: Where the thing claimed is capable of being paid into Court or placed in the custody of the Court the Plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. Procedure where defendants issuing plaintiff: 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.

4. Procedure at first hearing: - (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 admission of the parties do not enable the Court so to adjudicate it may direct

-

- a) that an issue or issues between the parties be framed and tried and
- b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,
and shall proceed to try the suit in the ordinary manner.

5. Agents and tenants may not institute interpleader suits: 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 the 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.

6. Charge for plaintiff's costs: 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

1. Power to state case for Court opinion:-(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, movable or immovable, 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.

2. where value of subject matter must be stated: Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered or to which the act specified has reference shall be stated in the agreement.

3. Agreement to be filed and registered as suit: -(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.

4. Parties to be subject to Court's jurisdiction: 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.

5. Hearing and disposal of case:- (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suits so far as the same are applicable.

(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 bona fide interest in the question stated therein and

c) that the same is fit to be decided,

it shall proceed to pronounce judgement thereon in the same way as in an ordinary suit and upon the judgement so pronounced a decree shall follow.

ORDER XXXVII

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS

¹[1. Application of Order: This order shall apply only to the High Court ²[to the District Court and to any other Civil Court notified in this behalf by the High Court.]

2. Institution of summary suits upon bills of exchange, etc: - (1) All suits upon bills of exchange hundies or promissory notes, may, in case the plaintiff desires to proceed hereunder be

¹ The original rule 1 has successively been amended by A.O., 1937 A.O., 1949, the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch. (with effect from the 14th October, 1955) and the civil Procedure and Limitation (Amdt.) Ordinance, 1961 (9 of 1961), s.2, to read as above.

² Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch. For "and to the District Court".

instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No.4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the 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, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree -

¹[a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section 79 or section 80 as the case may be of the Negotiable Instruments Act 1881 up to the date of the institution of the suit or for the sum mentioned in the summons whichever is less and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

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.

3. Defendant showing defence on merit to have leave to appear: - (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.

²[(3) The provisions of section 5 of the Limitation Act 1908 (IX of 1908) shall apply to applications under sub-rule (1)].

4. Power to set aside decree: 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.

5. Power to order bill, etc., to be deposited with officer Court: In any proceedings under this Order the Court may order the bill hundi or note on which the suit is founded to be forthwith

¹ Subs. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), section 4, for certain original words.

² New sub-rule (3) added by the Code of Civil Procedure (Amdt.), Ordinance, 1980 (10 of 1980), s.14.

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.

6. Recovery of cost of nothing non-acceptance of dishonoured bill or note: 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.

7. Procedure suits: 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

1. Where defendants may be called upon to furnish security for appearances: 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 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 Pakistan 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.

2. Security:- (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and

until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself in default of such appearance to pay any sum of money which the defendant may be ordered to pay in the suit.

3. Procedure on application by surety to be discharged:- (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 the application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Procedure where defendant fails to furnish security or find fresh security: Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to 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

5. Where defendants may be called upon to furnish security for production of property: - (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.

6. Attachment where cause not shown or security not furnished: - (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, make such other order as it thinks fit.

7. Mode of making attachment: Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Investigation of claim to property attached before judgment: 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.

9. Removal of attachment when security furnished or suit dismissed: Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

10. Attachment before judgment not to affect the rights of strangers nor bar decree holder from applying for sale: 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.

11. Property attached before judgment not to be re-attached in execution of decree: 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 re-attachment of the property.

12. Agricultural produce not attachable before judgment: Nothing in this Order shall be deemed to authorise 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.

¹[13. **Small cause Court not to attach immovable property:** Nothing in this Order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immovable property.

ORDER XXXIX
TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS
Temporary Injunctions

1. Cases in which temporary injunction may be granted: 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 wrongfully sold in execution of a decree, or
- b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach: (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 other wise, as the Court thinks fit.

(3) In case of disobedience, or 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 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

¹ Rule 13 ins. by the Small Cause Courts (Attachment of Immovable Property) Act, 1926 (1 of 1926), s.4.

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.

¹[(2-A) An interim injunction passed under rule 1 or 2 in the absence of defendant shall not ordinarily exceed fifteen days:

Provided that such injunction may be extended for failure of its service on the defendant when such failure is not attributable to the plaintiff or when the defendant seeks time for defence of application for injunction.

(2-B) The order of injunction made under rule 1 or 2 after hearing the parties or after notice to the defendant shall cease to have effect on the expiration of six months unless extended by the court after hearing the parties again and for reasons to be recorded for such extension: Provided that report of such extension shall be submitted to the High Court.

²**[3. Before granting injunction Court to direct notice to opposite party:** The Court shall in all cases, before granting an injunction direct notice of the application for the same to be given to the opposite-party:

³[Provided that except in the case of sale of goods for default in payment at the stipulated time of a debt in respect of which the goods were pledged with any bank, or where the injunction is to be granted against Government or a Government servant as such or any statutory authority, board or corporation set up or established by Government in any case not involving the ejection of any person from or the demolition of, any premises, the Court may where it appears that the object of granting injunction would be defeted by the delay, dispense with such notice:

Provided further that the period of notice under this rule to Government or a Government servant as such or any statutory authority, board or corporation set up or established by Government shall not be less than two days nor exceed seven days.

4. Order for injunction may be discharged varied or set aside: 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.

⁴**[4-A. Injunction to cease to be in force after certain period:** An injunction granted by a Court in a suit which seeks to question the validity or legal effect of any order made, proceedings taken or act done by authority or person, which has been made, taken or done, or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule to the Constitution or relates to, or is connected with assessment or collection of public revenues shall cease to have effect on the expiration of a period of ⁵[six months] following the day on which it

¹ Omitted and ins. by Act. SIV of 1994, s.11.

² Subs. by the civil Procedure and Limitation (Amdt.) Ordinance, 1961 (9 of 1961), s.2, for the original rule3.

³ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch. For the original provisos.

⁴ Rule 4A ins. by the code of Civil Procedure (Amdt.) Act, 1976 (15 of 1976), s.2.

⁵ Subs. by the code of Civil Procedure (Amdt.) Ordinance, 1977 (25 of 1977), s.2,f or “sixty days”.

is made, unless the case is finally decided, or the injunction is discharged or set aside, by the Court earlier.

Explanation - In this rule, 'public revenues' includes the dues of any bank owned by the Federal Government or of any corporation or undertaking owned or controlled by the Federal Government or a Provincial Government.]

5. Injunction to corporation binding on its officers, 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.

6. Power to order interim sale: 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 movable property, being the subject-matter of suit or attached before judgment in such suit, which is subject to speedy and natural decay or which for any other just and sufficient cause it may be desirable to have sold at once.

7. Detention, preservation or inspection, etc., of subject matter of suit: (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 authorise 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 authorise 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 authorised to enter under this rule.

8. Application for such orders to be after notice: - (1) An application by the plaintiff for an order under rule 65 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.

9. When party may be put in immediate possession of land the subject matter of suit: 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.

10. Deposit of money etc., in Court: 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

1. Appointment of receivers: - (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 authorise the court to remove from the possession or custody of property any person whom any party to the suit has not present right so to remove.

2. Remuneration The Court may by general or special order fix the amount to be paid as remuneration for the service of the receiver.

3. Duties: 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.

4. Enforcement of receiver's duties: 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.

5. When Collector may be appointed receiver: 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

1. Form of appeal. What to accompany memorandum:- (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.

(2) Contents of memorandum: 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.

2. Grounds which may be taken in appeal: 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 sufficient opportunity of contesting the case on that ground.

3. Rejection or amendment of memorandum: - (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.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all: 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

5. Stay by Appellate Court: - (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.

(2) **Stay by Court which passed the decree:** 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(3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

6. Security in case of order for execution of decree appealed from: - (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 immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall on the application of the judgment debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

¹⁷ [No security to be required from the Government or a public officer in certain cases.] Rep. By the A.O. 1937.

8. Exercise of powers in appeal from order made in execution of decree: The powers conferred by Rules 5 and 6 shall be exercise-able where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree[:]²

³[Provided that, where such appeal has been preferred by judgment-debtor he shall be required, unless the Court is of opinion that prima facie the appeal is one which must succeed owing to an error apparent on the face of the record.-

a) in the case of a decree for the payment of money, to deposit the decretal amount or to furnish security for its payment; and

b) in the case of any other decree, to furnish security for the due performance of the decree]

PROCEDURE ON ADMISSION OF APPEAL

9. Registry of memorandum of appeal: - (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.

(2) Register of Appeals: Such book shall be called the Register of Appeals.

10. Appellate court may require appellant to furnish security for costs:- (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 Pakistan: Provided that the Court shall demand such security in all cases in which the appellant is residing out of Pakistan and is not possessed of any

¹ See Order XXVII, rule 8A, supra.

² Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch. For full-stop.

³ Proviso added ibid.

sufficient immovable property within Pakistan 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.

11. Power to dismiss appeal without sending notice to Lower Court: - (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.

12. Day for hearing appeal: - (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.

13. Appellate Court to give notice to Court whose decree appealed from: - (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.

(2) Transmission of papers to Appellate Court 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 dispatch all material papers in the suit or such papers as may be specially called for by the Appellate Court.

(3) Copies of exhibits in Court whose decree appealed from: 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.

14. Publication and service of notice of day for hearing appeal: - (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.

(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.

15. Contents of notice: 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

16. Right to begin:- (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.

17. Dismissal of appeal for appellant's default: - (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.

(2) **Hearing appeal *ex-parte*:** Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

18. Dismissal of appeal where notice not served in consequences of appellant's failure to deposit costs: 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.

19. Readmission of appeal dismissed for default: -¹[(1)] Where an appeal is dismissed under rule 11, sub-rule (2) of 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.

(2) The provisions of section 5 of the Limitation Act 1908 (IX of 1908) shall apply to an application for re-admission of an appeal dismissed under sub-rule (2) of rule 11 or sub-rule (1) of rule 17.

20. Power to adjourn hearing and direct person appearing interested to be made respondents: Where it appears to the Court at the hearing that any person who was a party to the

¹ Re-numbered as sub-rule (1) of that rule by the Code of Civil Procedure (Amend.) Act, 1990 (4 of 1990), s.2.

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.

21. Rehearing on application of respondent against whom ex-parte decree made: - (1)

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.

¹[(2) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908) shall apply to applications under sub-rule (1).

22. Upon hearing respondent may be object to decree as if he had preferred separate appeal:- (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) Form of objection and provisions applicable thereto: 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.

(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. Remand of case by Appellate Court 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

¹ Sub-rule (2) added *ibid*.

evidence (if any) recorded during the original trial shall subject to all just exceptions be evidence during the trial after remand.

24. Where evidence on record sufficient . Appellate Court may determine finally: 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.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from: Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required.

And such court shall proceed to try such issues, and shall return the evidence to the appellate Court together with its findings thereon and the reasons therefore.

26. Findings and evidence to be put on record. Objections to findings: - (1) Such evidence and findings shall from 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 findings.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27. Production of additional evidence in Appellate Court - (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.

28. Mode of taking additional evidence: 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.

29. Points to be defined and recorded: 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

30. Judgment when and where pronounced: 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 maybe 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.

31. Contents, date and signature of judgment: 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.

32. What judgment may direct: 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.

33. Power of Court of Appeal. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection:

¹[Provided that the Appellate Court shall not make any order under section 35-A 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.

34. Dissen to be recorded: 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

35. Date and contents of decree: - (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.

36. Copies of judgment and decree to be furnished parties: Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. Certified copy of decree to be sent to Court whose decree appealed from: 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

¹ Proviso inserted by the Civil Procedure (Amendment) Act, 1922 (9 of 1922), which under s. 1(2) thereof may be brought into force in any Province by the Provincial Government on any specified date. The Act has been brought into force in the Punjab, and Sind.

AAPEALS FROM APPELLATE DECREES

1. Procedure: The rules of Order XLI shall apply so far as may be to appeals from Appellate decrees.

ORDER XLIII APPEALS FROM ORDERS

1. Appeals from Order: 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 the 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 pronouncing judgment against a party;
- 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;
- ¹[ii) an order under rule 62 or rule 103 of Order XXI relating to the right title or interest of the claimant or objector in attached property;
- j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

¹ Cl. (ii), added by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

- k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- l) an order under rule 10 of Order XXII giving or refusing to give leave;
- m) an order under rule 3 of Order XXIII recording or refusing to record an agreement compromise or satisfaction;
- n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- o) an order ¹[under rule 2 rule 4 or rule 7] of Order XXIV refusing to extend the time for the payment of mortgage money;
- p) an order 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 readmit or under rule 21 of Order XLI to re-hear an appeal;
- u) an order under rule 23 of Order XLI remanding a case where an appeal would lie from the decree of the Appellate Court;
- v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV;
- w) an order under rule 4 of Order XL:VII granting an application for review.

2. Procedure: The rules of Order XLI shall apply so far as may be to appeals from orders.

²3. Notice before presentation appeal: - (1) Where an appeal against an order is preferred during the pendency of a suit the appellant shall before presenting the appeal give notice of such appeal to the respondent or his advocate by delivering a copy of the memorandum and grounds of appeal alongwith a copy of the order appealed against either personally or through registered post acknowledgement due and the postal or other receipt shall be filed with the memorandum of appeal for the record of the appellate Court.

¹ Subs. by the Transfer of Property (Amdt.) Supplementary Act, 1930 (16 of 1930), s.2, for "under rule 3 or rule 8".

² New sub-rules 3 and 4 added by the Code of Civil Procedure (Amdt.), Ordinance, 1980 (10 of 1980), s.14.

(2) On receipt of notice referred to in sub-rule (1) the respondent may with the permission of the Court appear before it and contest the appeal and may be awarded costs on dismissal of the appeal in limine.

4. Application of rule 3 The provisions of rule 3 shall mutatis mutandis, apply to all applications filed before an appellate Court during the pendency of a suit.

**ORDER XLIV
PAUPER APPEALS**

1. Who may appeal as pauper: 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 .

2. Inquiry into the pauperism: 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 respect of his pauperism shall be necessary unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV
APPEALS TO THE ¹[SUPREME COURT]

²**[1. “Decree” defined:** In this Order unless there is something repugnant in subject or context the expression "decree" shall include a judgment or a final Order.

2. Application to Court whose decree complained of: Whoever desires to appeal to ³[the Supreme Court] shall apply by petition to the Court whose decree is complained of.

3. Certificate as to value or fitness:- ⁴[(1) A petition made under rule 2 shall briefly state the grounds of appeal and pray for a certificate.

(2) Upon receipt of such petition the Court shall direct notice to be served on the opposite-party to show cause why the said certificate should not be granted[:]⁵

⁶[Provided that no notice shall be directed to be served on or given to the opposite party or to the legal representative of a deceased opposite party in a case where such opposite party 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.

⁷[(3) The Court may if the opposite party in response to the notice issued under sub-rule (2) appears after hearing both the parties or if the opposite party does not appear in response to such notice then after hearing the party making the petition, grant or refuse the certificate

(4) If on the date fixed for the hearing the party making the petition does not appear and the opposite party appears in response to such notice or if both the parties do not appear on such date the petition shall be dismissed.

4. Consolidation of suits: For the purposes of pecuniary valuation suits involving substantially the same questions for determination and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination.

5. Remission of dispute to Court of first instance: In the event of any dispute arising between the parties as to the amount or value of the subject matter of the suit in the Court of first instance or as to the amount or value of the subject matter in dispute on appeal to ⁸[the Supreme Court], the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit refer such dispute for report to the Court of first instance which last mentioned Court shall proceed to

¹ Subs. by A.O., 1961, Art. 2 and Sch., for “King in Council” (with effect from the 23rd March, 1956).

² Subs. by F.A.A., 1975, Art. 2 and Sch. (with effect from the 14th August, 1973), for the original rule1.

³ Subs. by A.O., 1961, Art. 2 and Sch., for “His Majesty in council” (with effect from the 23rd March, 1956).

⁴ Subs. by F.A.O., 1975, Art. 2 and Sch. (with effect from the 14th August, 1973), for the original sub-rule (1).

⁵ Subs. *ibid.*, for full-stop

⁶ Proviso added by F.A.O., 1975, Art. 2 and Sch. (with effect from the 14th August, 1973).

⁷ Sub-rules (3) and (4) added *ibid.*

⁸ Subs. by A.O., 1961, Art. 2 and Sch., for “His Majesty in Council” (with effect from the 23rd March, 1956).

determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

6. Effect of refusal of certificate [Omitted by Federal Adaptation of Laws Order (P.O. 4 of 1975) w.e.f. 1st August 1975]

7. Security and deposit required on grant of certificate: - (1) Where the certificate is granted the applicant shall within ¹[ninety days or such further period, not exceeding sixty days as the Court may upon cause shown allow] from the date of the decree complained of or within six weeks from the date of the grant of the certificate whichever is the later date, -

a) furnish security ²[in cash or in Government securities for the costs of the respondent and

b) deposit the amount required to defray the expense of translating, transcribing, indexing ³[, printing] and transmitting to ⁴[the Supreme Court] a correct copy of the whole record of the suit, except –

(1) formal documents directed to be excluded by any ⁵[Rule of the Supreme Court] in force for the time being

(2) papers which the parties agree to exclude;

(3) accounts or portions of accounts which the officer empowered by the Court for that purpose considers unnecessary and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded;

Provided that the Court at the time of granting the certificate may after hearing any opposite party who appears order on the ground of special hardship that some other form of security may be furnished;

Provided further that no adjournment shall be granted to an opposite party to contest the nature of such security.

6* * * *

8. Admission of appeal and procedure thereon: Where such security has been furnished and deposit made to the satisfaction of the Court the Court shall -

¹ Subs. by the Indian Limitation and Code of Civil Procedure (Amdt.) Act, 1920 (26 of 1920), s.3, for “six months”.

² Ins. by the Indian Limitation and Code of Civil Procedure (Amdt.) Act, 1920 (26 of 1920), s.3.

³ Ins. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

⁴ Subs. ibid., for “His Majesty in Council” (with effect from the 23rd March, 1956).

⁵ Subs. ibid., for “Order of His Majesty in Council” (with effect from the 23rd March, 1956).

⁶ Sub-section (2), as amended by the Federal Laws (Revision and Declaration) Act 1951 (26 of 1951), s.4 and Third Sch., has been omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

- a) declare the appeal admitted
- b) give notice thereof to the respondent
- c) transmit to [the Supreme Court] under the seal of the Court a correct copy of the said record except as aforesaid and
- d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefore any paying the reasonable expenses incurred in preparing them.

9. Revocation of acceptance of security: At any time before the admission of the appeal the Court may upon cause shown revoke the acceptancy of any such security and make further directions thereon.

9.-A.Power to dispense with notices in case of deceased parties [Omitted by Federal Adaptation of Laws Order (P.O. 4 of 1975) with effect from 1st August 1975.]

10. Power to order further security or payment: Where at any time after the admission of an appeal but before the transmission of the copy of the record except as aforesaid to the Supreme Court wuch security appears inadequate.

Or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record except as aforesaid,

The Court may order the appellant to furnish within a time to be fixed by the Court other and sufficient security or to make within like time the required payment.

11. Effect of failure to comply with order: Where the appellant fails to comply with such order, the proceedings shall be stayed.

And the appeal shall not proceed without an order in this behalf of ¹[the Supreme Court],

And in the meantime execution of the decree appealed from shall not be stayed.

12. Refund of balance deposit: When the copy of the record except as aforesaid, has been transmitted to ²[the supreme Court] the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. Powers of Court of pending appeal: - (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

¹ Subs. by A.O., 1961, Art. 2 and Sch., for "His Majesty in Council" (with effect from the 23rd March, 1956).

² Subs. by A.O., 1961. Art. 2 and Sch. For "His Majesty in Council" (with effect from the 23rd March, 1956).

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court, -

- a) impound any movable property in dispute or any part thereof, or
- b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or
- c) stay the execution of the decree appealed from taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from or of any order which the Supreme Court may make on the appeal, or
- d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. Increase on security found inadequate: - Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) in default of such further security being furnished as required by the Court, -

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;
- (b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. Procedure to enforce orders of the Supreme Court: - (1) Whoever desires to obtain execution of any order of ¹[the Supreme Court] shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred.

(2) Such Court shall transmit the order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it

¹ Subs. by A.O., 1961, Art. 2 and Sch., for "His Majesty in Council" (with effect from the 23rd March, 1956).

accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

1* * * * *

²[(4) Unless the Supreme Court is pleased otherwise to direct, no order of the Supreme Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite-party or deceased respondent in a case where such opposite-party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court but such order shall have the same force and effect as if it had been made before the death took place.]

16. Appeal from order relating to execution: The orders made by the Court which executes the order of ³[the Supreme Court], relating to such execution, shall be appeal able in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

⁴17. [Appeals to the Federal Court]. Omitted by the Federal Court Act 1941 (XXI of 1941), S.2.

ORDER XLVI REFERENCE

1. Reference of question to High Court: 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.

2. Court may pass decree contingent upon decision of High Court: 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.

3. Judgment of High Court to be transmitted and case disposed of accordingly: The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point

¹ Sub-rule (3) omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch., which was previously amended by various enactments, from time to time.

² Sub-section (4) ins. by the Indian Limitation and Code of Civil Procedure (Amdt.) Act, 1920 (26 of 1920), s.5.

³ Subs. by A.O., 1961, Art. 2 and Sch., for "His Majesty in Council" (with effect from the 23rd March, 1956).

⁴ This section was ins. by A.O., 1937.

so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. Costs of reference to High Court: The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

5. Power to alter etc., decree of Court making reference: 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.

6. Power to refer to High Court questions as jurisdiction in small causes:- (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.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes:- (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 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 circumstance 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 purpose of this rule.

ORDER XLVII REVIEW

1. Application for review of judgment:- (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.

2. To whom application for review may be made: An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso, (a) be disposed of by his successor.

3. Form of application for review: The provisions as to the form of preferring appeal shall apply, mutatis mutandis, to applications for review.

4. Application where rejected:- (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted 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.

5. Application for review in Court consisting of two or more Judges: 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 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.

6. Application where rejected:- (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.

7. Order of rejection not appealable. Objections to order granting application:-(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 therefore 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. Registry of application granted and order for re-hearing: 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.

¹**[9. Bars of certain applications:-** (1) 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.

(2) Nothing in this order shall apply to any judgment pronounced or order made by the Supreme Court.

ORDER XLVIII MISCELLANEOUS

1. Process to be served at expense of party issuing:- (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.

(2) Costs of service: The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2. Orders and notices how served: 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.

3. Use of forms in appendices: The forms given in the appendices, with such variation as the circumstances of each case may require shall be used for the purposes therein mentioned.

ORDER XLIX ²*HIGH COURTS

1. Who may serve processes of High Court: 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 respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Saving in respect of High Court: 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 judgment and orders by a High Court.

¹ Subs. by F.A.O., 1975, Art. 2 and Sch., for the original rule 9.

² The word "Charter" omitted by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3 and 2nd Sch (with effect from the 14th October, 1955).

3. Application of rules: The following rules shall not apply to any 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 5,6,8,9,10,11,13,14,15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
- 5) rules 1 to 8 of Order XX; and
- 6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to any High Court in the exercise of its appellate jurisdiction.

ORDER L

PROVINCIAL SMALL CAUSE COURTS

1. Provincial Small Cause Courts: The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887, ¹* * * or to Courts exercising the jurisdiction of a Court of Small Causes ²[under the said Act], that is to say -

- a) so much of this schedule as relates to –
 - i) suit excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;
 - ii) the execution of decrees against immovable property or the interest of a partner in partnership property;
 - ii) the settlement of issues; and
- b) The following rules and Orders, -

Order II, rule 1 (frame of suit);

¹ The words and figures “or under the Berar Small Cause Courts Law, 1905” which were ins. by the Berar Laws Act, 1941 (4 of 1941), s.2 and Thir Sch., have been omitted by A.O., 1949.

² The original words “under that Act” have successively been amended by Act 4 of 1941, and A.O., 1949, to read as above.

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., minor (add description and residence), by C.D., (or by the Court of Wards], 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.

A.B, (add description and residence by his constituted attorney C.D (add description and
residence).

A.B, (add description and residence), Shebait Thakar.

FORMS OF PLEADINGS

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

A.B., the above-named plaintiff, states as follows:-

1. On the ____ day of ____ 19 he lent the defendant rupees repayable on the ____ day of ____.
2. The defendant has not paid the same except ____ rupees paid on the ____ day of ____ 19. (If the plaintiff was a minor (or insane) from the ____ day of ____ till the ____ day of ____.
3. The plaintiff was a minor (or insane) from the day of ____.
4. Facts showing when the cause of action arose and that the court has jurisdiction).
5. The value of the subject matter of the suit for the purpose of jurisdiction is ____ rupees.
6. The plaintiff claims ____ rupees with interest at ____ percent 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 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_____ 13, E.P. 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 [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 wiling 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 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 afterward.
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 REASONABLE RATE

(Title)

A.B. the above named plaintiff, states as follows:-

1. Between the ____ day of ____ 19 and the ____ day of ____ 19, 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 therefore, 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's 4 and 5 Form No. 1)

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 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 worth ____ rupees.

3. The defendant has not paid the money.

(As in paras 4 & 5 of Form No. 1)

4. The plaintiff as executor of Y. X. 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 £ F. 3rd Gd!. and the originals 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 para 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 [Kingdom], in a Suit therein pending between 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 & 5 of Form No. 1 and Relief claimed)

NO. 13 BREACH OF AGREEMENT TO PURCHASE LAND

A. B. the above named plaintiff states as follows:-

1. On the ____ day of ____ 19, the plaintiff and defendant entered into agreement and the original document is hereto annexed.

(Or, on the ____ day of ____ 19,. The plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of ____ for ____ rupees).

2. On the ____ day of 19, the plaintiff, being then the absolute owner of the property (and the same being free from encumbrances 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 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

A. B. the above-named plaintiff, states as follows:-

1. On the ____ day of 19, at ____ 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 therefore ____ 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 service ____ 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 & 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:-

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). I

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 above mentioned day, but afterwards on the_____day of 19, he refused to serve the plaintiff as aforesaid.

(As in paras 4 & 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 un-workman-like manner.

(As in paras 4 & 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 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 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 of clerk and cashier 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 & 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, constructing 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 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 there from 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 and was compelled to expend ____rupees in moving, and lost the custom of G.H and I. J. by such removal].

(As in paras 4 & 5 of Form No. 1 and Relief claimed)

NO. 20 ON AN AGREEMENT OF INDEMNITY
(Title)

A. B, the above-named plaintiff states as fellows:-

1. On the____day of ____19, the plaintiff and defendant, being partners in trade under the style of A.B and C. D, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and Indemnify the plaintiff against all claims that might be upon him on account of any indebtedness of the firm

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the____day of ____19, (a Judgment was recovered against the plaintiff and defendant by E. F. in the High Court of Judicature at ____upon a debt due from the firm to E.F. and on the day of____, the plaintiff paid____rupees (in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

(As in paras 4 & 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 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 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 & 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, 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 deceive and injure the plaintiff.
4. E. F (did not pay for the said goods at the expiration of the period aforesaid, or] has not paid for the said rice; and the plaintiff has wholly lost the same.

(As in paras 4 & 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 well therein and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.
2. On the ____ day of __19, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.
3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes and the plaintiff and his family are deprived of the use and benefit of the well and water.

(As in paras 4 & 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 _____ situated in _____
2. Ever since the day 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 vapors and noxious matter, which spread over and upon the said lands and corrupted and settled on the surface of the lands.
3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated. In value, and the cattle and live stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.
4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock there from, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

NO. 25. OBSTRUCTING A RIGHT OF WAY
(Title)

A.B. the above-named plaintiff, states as follows:-

1. The plaintiff is, and at the time hereinafter mentioned was possessed of a house in the village of_____.

2. He was entitled to a right of way from the house over a certain field to a public highway and back again from the highway over the field to the house for himself and his servants (with vehicles, or on foot] at all times of the year.

3. On the _____ day of 19 defendant wrongfully obstructed the said way, so that 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 plaintiffs states as follows:-

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of 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.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

NO. 28. OBSTRUCTING A RIGHT TO USE WATER IRRIGATION
(Title)

A. B., the above-named plaintiff, states as follows:-

1. Plaintiff is and was at the time hereinafter mentioned., possessed of certain lands situate, etc. and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the _____ day _____ 19, defendant prevented the plaintiff from taking and using the 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 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 collusion occurred on the said railway caused by the negligence and unskillfulness of the defendant's servants, whereby the plaintiff was much injured (having leg, broken, his head cut, etc. and state the special damage, if any as) and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as a salesman.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

Or thus:-2. On that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendant's 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. above-named plaintiff, states as follows:-

1. The plaintiff is a shoe-maker, carrying on business at _____. The defendant is a merchant of _____.

2. On the _____ day of _____ 19, the plaintiff was walking ¹[westward] along ²[Bunder Road], in the city of ³[Karachi] at above 3 O'clock in the afternoon. He was obliged to cross ⁴[Wood Street], which is a Street running into Bunder Road at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's servants, was drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Wood Street into Bunder Road. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fail and trampling 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.

¹ Subs. by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s.4 and Third Sch., for "southward"

² Subs. *ibid.*, for "Chowringhee".

³ Subs. *ibid.*, for "Calcutta".

⁴ Subs. *ibid.*, for "Middleton Stree".

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

**NO. 32 MOVABLES 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 (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 and Relief claimed)

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 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 who had notice of the falsity of the representation].

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

7. The plaintiff claims:-

- (1) Delivery of the said goods, or ____ rupees in case delivery cannot be had;

(2) Rupees compensation the detention thereof

NO. 34 RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE
(Title)

A.B, the above-named plaintiff, states as follows:-

1. On the day of _____ 19, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at _____ contained (ten bighas].

2. The 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 _____ rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only (five bighas].

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

The plaintiff claims:-

(1) _____ rupees with interest from the _____ day of _____ 19,

(2) that the said agreement be delivered up and cancelled.

NO. 35

AN INJUNCTION RESTRAINING WASTE
(Title)

A.B. the above named plaintiff, states as follows:-

1. The plaintiff is the absolute owner of _____ (describe the property).

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has (cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale) without the consent of the plaintiff.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

(As in paras 4 and 5 of Form No. 1 and Relief 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 _____ Karachi.

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 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 send the same.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

NO. 37 PUBLIC NUISANCE
(Title)

A. B. the above-named plaintiff states as follows:

1. The defendant has wrongly heaped up earth and stones on a public road known as _____ street at _____ so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of: the Advocate-General (or other officer appointed in this behalf] to the Institution of the suit.

(As in paras 4 and 5 of Form No. 1 and Relief claimed)

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 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 MOVABLE PROPERTY THREATENED WITH DESTRUCTION
AND FOR AN INJUNCTION
(Title)**

A.B. the above-named plaintiff, states as follows -

1. Plaintiff is and at all, times hereinafter, mentioned were, the owner of (a portrait of his grand-father which was executed by an eminent painter) which 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 and Relief claimed)

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. 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 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 OTHERS**

(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 movable (and immovable, or the proceeds of the immovable 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 movable [and immovable) property of E.F. deceased and that the same may be administered under the decree of the court).

NO. 42. ADMINISTRATION BY SPECIFIC LEGATES

(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 substitutes:-

The defendant is in possession of the movable 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 and subject of the specific bequest) or that etc.

NO. 43 ADMINISTRATION BY PECUNIARY LEGATEE
(Title)

(Alter Form No. 41 thus)

(Omit paragraph I and substitute for paragraph 2) E. F. late of _____ died on or about 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 movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life: and after his decease, and in default of his having a son who should attain twenty one or a daughter who should attain that age or marry, upon trust as to his immovable property for would be the testator's heir-at-law, and as to his movable 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 movable and immovable property the defendant entered into the receipt of the rents of the immovable property and got in the movable property , he has sold some part of the immovable property.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff claims:-

(1) to have the movable and immovable property of A. B. administered in this court and for that purpose to have all proper directions given and accounts taken.

(2) Such further or other relief as the nature of the case may require.

NO. 44 EXECUTION TRUSTS
(Title)

A. B. the above-mentioned plaintiff, states as follows:-

1. He is one of the trustees under an instrument of settlement bearing date on or about the _____ day of _____ made upon the marriage of E. F. and G. H., the father and mother of the defendant (or an instrument of transfer of the estate and effects of E. F. for the benefit of C. D. the defendant, and the other creditors of E. F.).

2. A. B. has taken upon himself the burden of the said trust and is in possession of (or of the proceeds of) the movable and immovable property 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 immovable property (and the Proceeds of the sale of the said or of part of the said, immovable property, or movable or the proceeds of the sale of or of part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust) and he prays that the Court will take the accounts of the said trust, and also that the whole of 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 modeled, 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 which he claims).

(If the plaintiff is mortgagee in possession, add)

3. The plaintiff took possession of the mortgaged property on the ____ day of ____ and is ready to account as mortgagee in possession from that time.

(As in paras 4 and 5 of Form No. 1)

6. The plaintiff claims-

(1) payment or in default (sale or) foreclosure (and possession)
(Where Order 34, rule 6 applies).

2) In case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty is 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 plaintiff claims to redeem the said property and to have the sari re-conveyed 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 immovable property therein described and referred to 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 to accept a transfer and possession of the said property] and to pay the costs of the suit.

NO. 48 SPECIFIC PERFORMANCE
(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 immovable 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 ____ 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 the purchase-money of the said property to the defendant.

(As in paras 4 and 2 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 PARTNERSHIPS
(Title)

A. B. the above-named plaintiff, states as follows -

1. He and C.D. the defendant have been for ____years [or months] past carrying on business together under articles of partnership in writing (or under a deed, or under a verbal agreement).
2. Several disputes and differences, have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in. partnership with advantage to the partners (or the defendant has committed the following breaches of the partnership articles:-

- (1)
- (2)
- (3)

(As in paras 4 and 5 of Form No. 1)

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 Defenses

Denial-The defendant denies that (set out facts).

The defendant does not admit that (set out facts).

The defendant admits that____ but says that

Protest.-The defendant denies that he is a partner and the defendant firm of the plaintiff.

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 this plaint or any of them.

Limitation.-The suit is barred by article____ or article of the Second Schedule to the (Indian Limitation Act, 1877].

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 case may be) has paid into court Rs. and says that this sum is enough to satisfy the p claim (or the part aforesaid).

Performance remitted -The performance of the promise alleged was remitted on the ____ (date).

Rescission-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 statement as to which estopped is claimed) because (here state the facts relied on as creating the estoppels).

Ground of defense subsequent to institution of suit.-Since the institution of the suit, that is to say, on the day of____ (set out facts).

NO. I 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. 1.
- 5 . Except as to Rs._____ same as 2.
6. 3.

7. The defendant (or A.B. the defendant's agent], satisfied the claim by payment before suit to the plaintiff (or to C. D. the plaintiff's agent] on the day of____19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the____day of 19__

No. 2 DEFENCE IN SUITS IN BONDS

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3 DEFENCE IN SUITS ON GUARANTEES

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4. DEFENCE IN ANY SUIT FOR DEBT

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:-

Rs.

1907, January, 25th ... 150

February, 1st ... 50

Total 200

2. as to the whole (or as to Rs.____ part of the money claimed the defendant made tender before suit, of Rs.____ and has paid the same into Court.

No. 5. DEFENCE IN SUITS FOR INJURIES CAUSED BY I4EGL DRIVING

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to____ of_____.

Street ¹(Karachi) livery stable keepers employed by the defendant to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said.

2. The defendant does not admit that the said carriage was turned o of ²(Wood Street) either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6. DEFENCE IN ALL SUITS FOR WRONGS

1. Denial of the several acts [or matters] complained of.

No. 7. DEFENCE IN SUITS FOR DETENTION OF GOODS

¹ Subs. by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s.4 and Third Sch., for “Calcutta”.

² Subs. ibid., for “Middleton Street”.

1. The goods were not the property of the plaintiff.
 2. The goods were detained for a lien to which the defendant was entitled.
- Particulars are as follows:-

1907, May 3rd. To carriage of the goods claimed from ¹(Lahore) to (Karachi):-
45 maunds at Rs. 2 per maund

No. 8 DEFENCE IN SUITS FOR INFRINGE 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 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 by the defendant's buildings].
3. The defendant denies that he or his servants pollute the water [or do what is complained of].
(if the defendant claims the right by prescription or otherwise to do what is complained of he must say so, and must state the grounds of the claim i.e. whether by prescription, grant or what].
4. The plaintiff has been guilty of laches of which the following are particulars:-
1870. Plaintiff's mill began to work.
1871 Plaintiff came into possession.
1883 First complaint.
5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [If other grounds are relied on, they must be stated, e.g., limitation as to post damage.].

NO. II. DEFENCE TO SUIT FOR FORECLOSURE

1. The defendant did not execute the mortgage.

¹ Subs. *ibid.*, for "Dehli".

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 Second Schedule to the Indian Limitation Act, 1877.
4. The following payments have been made viz.,
Rs.
(Insert late) 1,000
(insert date) 500
5. The plaintiff took possession on the of _____ of _____.
6. That plaintiff released the debt on the _____.
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 Second Schedule to the Indian
¹[Limitation Act, 1877].
 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 mortgaged 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).

¹ Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and Second Sch., for "Indian Limitation Act, 1877 (XVB of 1877)".

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. II (or by mutual agreement).

(in cases where damages are claimed and the defendant disputes his liability to damages he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on e.g.. the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)

NO. 14 DEFENCES IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE

1. A. B. will contained a charge of debts he died insolvent: he was entitled at his death to some immovable property which the defendant sold and which produced the net sum of Rs.____ and the testator had some movable 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 immovable 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
¹[Indian Succession Act, 1865 [or of the Hindu Wills Act, 1870].

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 fraud 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 presents knowledge, being (state the nature of the fraud].

5. The deceased at the time of the execution of the said will (or of the contents of the residuary clauses in the said will as the case may be).

¹ See now the Succession Act, 1925 (39 of 1925).

6. The deceased made his true will, dated the 1st January 1873 there by appointed the defendant sole executor thereof.

The defendant claim:-

(1) That the court will pronounce against the said, will, and codicil propounded by the plaintiff.

(2) That the court will decree probate of the will of the deceased dated the 1st January, 1873, in solemn form of law.

NO. 16. PARTICULARS
(Title of suit)

Particulars -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____.

(Here set out the particulars ordered in paragraphs if necessary)

APPENDIX B
PROCESS

NO. I. SUMMONS FOR DISPOSAL OF SUIT, (O. 5, r. 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.

S1ND. Insert the following note in red ink in forms 1, 2, 3, 5 and 6:-

Also take notice that in default of your filling an address for service on or before the date mentioned you are liable to have your defence struck out.

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 ¹[and to file on or before that date your written statement].

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.

SIND See the Local Amendment of Sind for Form No I Appendix B

NO. 3 SUMMONS TO APPEAR IN PERSON (O. 5, r. 3)
(Name, description and place of residence)

To

¹ Ins. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

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 _____ 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.

GIVEN under my hand and the seal of the court this day of _____ 19
SIND See the Local Amendment of Sind for Form NO. 1 Appendix B.

NO. 4 SUMMON IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT (O. 37, r. 2)
(Title)

To,
(Name, description and place of residence)

WHEREAS _____ has institute a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, 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
¹[together with such interest, if any, from the date of the institution of the suit as the Court may order].

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits; or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19
Judge

**NO. 5. NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED
AS CO-PLAINTIFF (O. I, 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 _____.
Judge

SIND. The Local Amendment of Sind for Form No. I, Appendix B.

¹ Ins. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), s.4.

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 OR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT (O. 5, r. 21)

(Title)

WHEREAS it is stated that _____defendant/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 defendant_____ 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.

ORDERED FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER (O. 5, r. 24)

(Title)

The Superintendent of the Jail at_____

UNDER the provisions of Order V rule 24 of the Code of Civil Procedure 1908 a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge

NO. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER. (O. 5, rr. 27, 28)

(Title)

To

UNDER the provisions of Order V, Rule 27 (or 28 as the case may be) of the Code of Criminal Procedure, 1908 a summons in duplicate is herewith forwarded for service on the defendant_____

who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the, said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge

NO. 10
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 summons, the service which may have to be affected in the same manner.

No. 11
AFFIDAVIT OF PROCESS 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, received a summons notice issued by the Court of ____ in Suit No. ____ 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 at about ____ O clock in the ____ non 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 thereon 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 rule 15 & 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 time Code of
Civil Procedure, 1908, to administer
the oath to deponents.*

NO. 12 NOTICE TO DEFENDANT (O. 9, r. 6)
(Title)

To

WHEREAS this day was fixed for the hearing of the above Suit and a summons was Issued to you and the plaintiff has appeared In this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same; in default of your appearance 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 this court on the day ____ of ____ 19 ,
O'clock in the forenoon, and to bring with you (or to send to this ____ court).

A sum of Rs. ____ being your traveling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1908.

GIVEN under my hand and the seal of the Court, this ____ day ____ of ____ 19
Judge

NOTICE: (1) If you are summoned only to produce a document and not to 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 of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness In this court on to 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 office that (he summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such. summons This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attendance of the witness in this Court on the____ day of____ 19, at____ O'clock in the forenoon and from day to day until he shall have leave to depart and if the witness fails to 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.

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____ 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 his 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__.

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 (defendant 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. I supra)

The answer of the above-named defendant E. F. to the interrogatories for hi 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 paragraph 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. I supra)

Upon hearing____ do within ____ days 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
ORDER FOR AFFIDAVIT AS TO DOCUMENTS (O. 11, r. 13)
(Title as in No. I 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 my possession power the document relating to the matters in question in this suit set forth in the second schedule hereto.
4. The last-mentioned were lost in my possession or power an (state 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. I 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. I 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. 10)
(Title as in No. I 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 _____ 19, on the ground that (state the ground):-

NO. 9
NOTICE TO ADMIT DOCUMENTS (O. 12, r. 3)
(Title as in No. I 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 was so 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).

(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. I supra)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suits 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, saying all just exceptions to the admissibility of such facts as evidence in this suit.

G. H. pleader [or agent] for plaintiff (or defendant)

To E.F, pleader [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are:-

1. That M died on the 1st January, 1890.
2. That he died intestate.
3. That N was his only lawful son.
4. That O died on the 1st April, 1996.
5. That O was never married.

NO. 11. ADMISSION OF FACTS PURSUANT TO NOTICE (O. 12, r. 5)
(Title as in No. 1 supra)

The defendant (or plaintiff) in this suit, for the purposes of this suit only, hereto 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	Qualification or limitation if any subject to which they are admitted
1. That M. died on the 1st January, 1890. 2. That he died intestate 3. That N. was his lawful son 4. That O. died 5. That O. was never married. ..	1. 2. 3. But not that he was his only lawful son. 4. But not that he died on the 1st April, 1896. 5.

NO. 12 NOTICE TO PRODUCE (GENERAL FORM) (O. 12, r. 8)
(Title as in No. I 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 writing 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 it (or plaintiff)

APPENDIX D

**DECREE
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____ for the plaintiff and of____ for the defendant, it is ordered and decreed that____ and that the sum of Rs.____ be paid by the ____ to the ____ on account of the costs of this suit, with interest thereon at the rate of per cent ____ per annum from this date to date of realization.

GIVEN under my hand and the seal of the court, this ____ day of ____ 19

Judge
Costs of Suits

Plaintiff					Defendant			
	R s.	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								
6. Commissioner's fee					Service of process			
7. Service of process. .								
Total					Commissioner's fee			
					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 Suits

Plaintiff		Defendant
-----------	--	-----------

	R s.	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								
6. Commissioner's fee					Service of process			
7. Service of process. .								
					Commissioner's fee			
Total								
					Total			

NO. 3 PRELIMINARY DECREES FOR FORECLOSURE
Order XXXIV rule, 2 --Where accounts are directed to be taken)
(Title)

This suit coming on this_____ day. etc. It is hereby ordered and decreed that it be referred to _____as the Commissioner to take the accounts of following:-

(1) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the willful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for, co charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate at the same rate as is payable on the principal, or falling both such rates, at nine per cent per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any shall be added to the mortgage money or, as the case may be, debited in reduction of the amount to the plaintiff on account of interest on the principal sum adjusted due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commission shall present the amount to this Court with all convenient dispatch after making all just allowances on or before the___ day of___ and that upon such report of the Commissioner being received, it shall be confirmed and counter signed, subject to such modifications as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the defendant do pay into Court on or before the day of ____ or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs. ____ for the costs of the suit awarded to the plaintiff.

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule together with such subsequent Interest as may be payable under rule II of Order XXXIV of the first schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default, of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property, and that the parties shall at liberty to apply to Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
NO. 3A. PRELIMINARY DECREE FOR FORECLOSURE
(Order XXIV, rule 2 -Where the Court declares amount due)
(Title)

This suit coming on this __ day etc. It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this __ day of __ as the sum Rs. ____ for the sum of Rs. ____ for principal, the sum of Rs. ____ for interest on the principal, the sum of Rs. ____ for costs charges and expenses (other than the costs of the suit property incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs. ____ for the costs of the suit awarded to the plaintiff, making in all the sum of Rs. ____.

2. And it is hereby ordered and decreed as follows:-

- (i) that the defendant do pay into Court on or before the day of _____ or any later date up to which time for payment may be extended; by the Court of the said sum of Rs. _____

- (ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property in the Schedule annexed hereto and shall if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
Description of the mortgage property
No. 4
FINAL DECREE FOR FORECLOSURE
(Order XXXIV, rule 3)
(Title)

Upon reading the preliminary decree passed in this suit on the ____ day of ____ and further orders (if any) dated the ____ day of ____ and the application of the plaintiff dated the ____ day of ____ for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage;

It is hereby ordered and decreed that the defendant and all, persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; *[(if the defendant be in possession of the said mortgaged property that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property)].

2. And it is hereby further declared, that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

No 5

PRELIMINARY DECREES FOR SALE

**(Order XXXIV, rule 4 -Where accounts are directed to be taken)
(Title)**

This suit coming on this _____ day, etc, it is hereby ordered and decided that it be referred to _____ as the Commissioner to take the accounts following:

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

"(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order *or* for the use of the plaintiff or which without the willful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction "of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient dispatch after making all just allowances on or before the _____ day of _____. And that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification-as may be necessary after consideration-of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed-

(i) that the defendant do pay into Court on or before the day of _____ or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. _____ for the costs of the suit awarded to the plaintiff;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such cost of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all in-cumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peace. able possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court. for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, .or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that, the money realised by such sale shall be paid into Court and shall be duly applied (after deduction there from of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for 'payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be' at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions at it thinks fit.

SCHEDULE

Description of the mortgaged property

No. 5A PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.-When the Court declares the amount due)

(Title)

THIS suit coming on thisday, etc. ; It is hereby declared that
he amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day
of _____ is the sum of _____
Rs. _____ for principal, the sum of Rs.for interest on
the said principal, the sum of Rs.for costs, charges and expenses
(other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-
security, together with interest thereon, and the sum of Rs.for the costs of the suit awarded to the
plaintiff, making in all the sum of Rs. _____

2. And it is hereby ordered and decreed as follows;

(i) that the defendant do pay into Court on or before the
day of _____ or any later date up to which time
for payment may be extended by the Court, the said sum of Rs. _____

(ii) that, on such payment and on payment thereafter before 'such date as the Court may fix of such
amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges
and expenses as may be payable under rule 10, together with such subsequent interest as may be
payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure,
1908, the plaintiff shall bring into Court all documents in his possession or power relating to the
mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the
defendant, or to such person as he appoints, and the plaintiff shall, if so required, reconvey or
retransfer the said property free from the said mortgage and clear of and from all in-cumbrances
created by the plaintiff or any person claiming under him or any person under whom he claims and
shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff
may apply to the Court for a final decree for the sale of the mortgaged property; and on such
application being made, the mortgaged property or a sufficient part thereof shall be directed to be
sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer
as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied,(after deduction there from of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXI V of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for the personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No.6

FINAL DECREE FOR SALE (Order XXXIV, rule 5)

(Title)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or on power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction there-from of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule to. together with such subsequent interest as may be payable under rule 11, of, Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 and that the balance if any, shall be paid to the defendant or other persons entitled to receive the same.

No.7

(Order XXXIV, rule 7.-Where accounts are directed to be taken)

This-suit coming on this day, etc. ; It is hereby ordered and decreed that it be referred to as the Commissioner to take...the accounts follwoing:

- (i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);
- (ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or, for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;
- (iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);
- (iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.
2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.
3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the _____ day of _____, and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed

(i) that the plaintiff do pay into Court on or before the day of, or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No.7A

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.

(Order XXXIV, rule 7.-Where accounts are directed to be taken)

(Title)

This suit coming on this day, etc. ; it is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint

(such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable) ;

ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of an sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum) ;

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shan present the account to this Court with an convenient despatch after making all just allowances on or before the day of , and that, upon such report of the Commissioner being received, it shan be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shaH find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents

in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No.7B

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED. (Order XXXIV, rule 7.-Where the Court declares the amount due)

(Title)

This suit coming on this day, etc; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the

said principal principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with. interest thereon, and the sum of Rs., for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered add decreed as follows :

(i) that the plaintiff do pay into Court on or before the day of or any later date 'up to which time for payment may be extended by the Court the said sum of Rs. ;

(ii) that, on Such' payment and on payment thereafter before such date as the 'Court' may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as maybe payable under rule 10, together "with such subsequent interest as maybe payable under rule 11 of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the, plaint mentioned, and all such documents shall be delivered over to the plaintiff; or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and, from all incumbrances created' by the defendant or any person claiming under him or any person under 'whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall; if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall henceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property;' and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion and on, such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No.7C

**PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF,
PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.**

(Order XXXIV, rule,7 Where the Court declares the amount due)

(Title)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum . of Rs., for principal, 'the sum of Rs. for interest on

2. And it is hereby ordered and decreed as follows :

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defend and may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him, under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that (the parties are at liberty **to apply** to the court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks.

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Description of the mortgaged propeerty

No.7D

**FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON DEFAULT OF
PAYMENT BY MORTGAGOR.**

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and decreed that the plaintiff and all persons claiming through *or* under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned and (*if the plaintiff be in possession of that said mortgaged property*) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property. .

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint *or* from this suit is hereby discharged and extinguished.

No.7E

**FINAL DECREE FOR SALE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT
BY MORTGAGOR.**

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and' decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before, the

Court or such officer as it appoints all documents in his possession or power relation to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction there-from of the expenses of the sale) in payment of the amount payable to' the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be. paid to the plaintiff or other persons entitled to receive the same.

No.7F

**FINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR REDEMPTION WHERE
THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE.**

(Order XXXIV, rules 3, 5 and 8)
(Title)

This suit coming on thisday for further consideration and it appearing that on the day of the mortgagor or, the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of; It is hereby ordered and decreed that :

(i) The mortgagee do execute a deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor or, as the case may be, who has redeemed the property or an acknowledgment of the payment of the amount due in his favour;

(ii) The mortgage do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgage executing the deed of reconveyance or acknowledgment in the manner aforesaid,

(i) The said sum of Rs. be paid out of Court to the mortgagee;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor or the person making the payment and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor or other person making the payment, the said deed of reconveyance or the acknowledgment in the office of the Sub-Registrar of; and

(iil) if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor or such person as aforesaid who has made the payment.

No.8
DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE,
SALE OF THE MORTGAGED PROPERTY,

(Order XXXIV, rules 6 and 8A)

(Title)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case' may be) 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 final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs.

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff, or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs, with further interest at the rate of six percent per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

No.9

PRELIMINARY DECREE FOR FORECLOSURE FOR SALE

Plaintiff
Defendant' No.1
Defendant No.2'

1st, Mortgagee.
Mortgagor
2nd 'Mortgagee

(Order XXXIV, rules, 2 and 4)

(Title)

The suit coming on this day, etc.; it is hereby that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs.for the costs of this suit awarded to the plaintiff, making in all, the sum of Rs.,

(Similar, declarations to be introduced with, regard to the amount due to defendant No.2 in respect of his mortgage if the mortgage-money due there-under, has become payable at the date of the suit).

2. It is further declared that the plaintiff is entitled, to payment of the amount due to him in priority

to defendant No.2 or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively.

3. And it is hereby ordered and decreed as follows:

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(b) that defendant No.1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No.2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No.

(Who has made the payment). or to such person as he appoints, and the plaintiff shall, if so required, re-convey' or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No.

(who has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No.1 pays the amount found or declared to, be due to defendant No.2 with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, ,in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree

(i) in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for the mortgage-deed is foreclosure and not sale] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property;

Or

(ii). in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or "such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(iii) in the case where a sale is ordered under clause 4 (ii) above that the money realised by such

sale shall be paid into Court and be duly applied (after deduction there-from of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908. and that the balance, if any, shall be applied in payment of the amount due to defendant No.2; and that if any balance be left, it shall be paid to the defendant No.1 or other persons entitled to receive the same; and

(iv) That. if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No.2, the plaintiff or defendant No.2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any Jaw for the time being in force) to apply for a personal decree against defendant No.1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed

(a) that if defendant No.2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No.1 makes default in the payment of the said amount, defendant No.2 shall be at liberty to apply to the Court to keep the plaintiffs mortgage, alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)

(i) that defendant No.1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgage property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No.2 quiet and peaceable possession of the said property; or

(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No.2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;

and (b) (if on the application of defendant No.2 such a final decree for, c foreclosure is passed), that the whole of the liability of defendant No.1 arising from the plaintiff's mortgage or from the mortgage of defendant No.2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed *in the case where a sale is ordered under clause 5 above.*

(i) that the money realized by such sale shall be paid into Court and be duly applied (after deduction there-from of the expenses of the sale) first in payment of the amount paid by defendant No.2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said. amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No.2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such

costs of this suit and such costs, charges and expenses as may be payable to defendant No.2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No.1 or other persons entitled to receive the same; and

(ii) that, if the money realized by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No.2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No.1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE
Description of the mortgaged property.

No. 10

**PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND
FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE.**

Plaintiff	...	..	..	..	..	..	..	..	..	2nd Mortgagee,
										Vs.
Defendant No.1	...	..	..	..	..	..	..	..	..	Mortgagor
Defendant No.2	...	..	..	..	..	..	..	..	..	1st Mortgagee]

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No.2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No.2 in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No.2, making in all the sum of Rs. .

(Similar declarations to be introduced with regard to the amount due from defendant No.1 to the plaintiff in respect of his mortgage if the mortgage money due there-under has become payable at the date of the suit.)

2. It is further declared that defendant No.2 is entitled to payment of the amount due to him in priority to the plaintiff or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:

3. And it is hereby ordered and decreed as follows:

(i) (a) that the plaintiff or defendant No.1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No.2; and

(b) that defendant No.1 do pay into Court on or before the day of or any later date up-to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No.1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXV of the First Schedule to the Code of Civil Procedure, 1908, defendant No.2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No.1 (whoever has made the payment), or to such person as he appoints, and defendant No.2 shall, if so required, recovery or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No.2 or any person claiming under him or any person under whom he claims, and also free, from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No.1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No.1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that. in default of payment as aforesaid, of the amount due to defendant No.2, defendant No.2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree

(i) *in the case of mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage deed is foreclosure and not sale*] that the plaintiff and defendant No.1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from an right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No.2 quiet and peaceable possession of the property; or

(ii) *in the case of any other mortgage* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No.2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(iii) *in the case where a sale is ordered under clause 4(ii) above* that the money realized by such sale shall be paid into Court and be duly applied (after deduction there-from of the expenses of the sale) in payment of the amount payable to defendant No.2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to

defendant No.2 in respect of such costs of the suit and such costs, charges and expenses as may be payable *to* the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule *to* the *Code* of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due *to* the plaintiff and that, if any balance be left, it shall be paid *to* defendant No.1 or other persons entitled to receive the same; and

(iv) that, if the money realized by such sale shall not be sufficient *for* payment in full of the amounts due *to* defendant No.2 and the plaintiff, defendant No.2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is *not* barred *by* any law for the time being in force) *to* apply for a personal decree against defendant No. 1 *for* the amounts remaining due *to* them respectively.

5. And it is hereby further ordered and decreed,

(a) that, if the plaintiff pays into Court *to* the credit of this suit the amount adjudged due to defendant No.2 but defendant No.1 makes default in the payment of the said amount, the plaintiff shall be at liberty *to* apply *to* the Court *to* keep defendant No. 2's mortgage alive *for* his benefit and *to* apply for a final decree

(in the same manner as the defendant No.2 might have done under clause 4 above)

(i) that defendant No.1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; or

(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;

and (b) (if on the application of defendant No.2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No.1 arising from the plaintiff's mortgage or from the mortgage of defendant No.2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed *(in the case where a sale is ordered under clause 5 above)*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction there-from of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together

with such subsequent interest as may be payable under rule II, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No.1 or other persons entitled to receive the same; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No.2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No.1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

Description of the mortgaged property

No. 11

PRELIMINARY DECREE FOR SALE

[Plaintiff ...

Sub or derivative mortgagee.

Vs.

Defendant No.1

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..

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Mortgagor.

Defendant No.2

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..

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..

Original mortgagee.]

(Order XXXIV, rule 4)

(Title)

This suit coming on this day, etc.; It is hereby declared that the amount due to defendant No.2 on his mortgage calculated up to this day of is the sum of Rs. For principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No.2, making in all the sum of Rs. (Similar declarations to be introduced with regard to the amount due from defendant No.2 to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows:-

(i) that defendant No.1 do pay into Court on or before the said day of or any later date up to 65 which time for payment may be extended by the Court the said sum of Rs. due to defendant No.2.

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No.2 being at liberty to pay such amount.)

(ii) that, on payment of the sum declared due to defendant No.2 by defendant No.1 in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No.2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No.1, or to such person as he appoints, and defendant No.2 shall, if so required, re-convey or re-transfer the property to defendant No.1 free from the said mortgage clear of and from all incumbrances created by defendant No.2 or any person claiming under him or any person under whom he claims, and free from an liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No.1 quiet and peaceable possession of the said property; and

(iii) that, upon payment into the Court by defendant No.1 of the amount due to defendant No.2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall then be paid to defendant No.2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No.2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No.2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (ii) of clause 2 .

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No.2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction there-from of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No.2; and that, if any balance be left, it shall be paid to defendant No.1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No.2, the plaintiff or defendant No.2 or both of them, as the case may be, shall be at liberty (if such remedy

is open under their respective mortgages and is not barred by any law for the time being In force) to apply for a personal decree against defendant No.2 or defendant No.1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No.2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No.1 makes default in payment of the amount due to defendant No.2, defendant No.2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)-(*declarations in the ordinary from to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him there-under.*

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE

(Description of the mortgaged property]

No. 12

DECREE FOR RECTIFICATION OF INSTRUMENT

(Title)

It is hereby declared that the, dated the day of 19, does not truly express the intention of the parties to such

And it is decreed that the said be rectified by

No. 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

It is hereby declared that the, dated the day of 19, and made between and, is void as against the plaintiff and all other the creditors, if any, of the defendant.

No. 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

LET the defendant, his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL

(Title)

LET the defendant , his contractors, agents and workmen, be perpetually restrained from continuing *to* erect upon his premises in any house or building *of* a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down. so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16

INJUNCTION RESTRAINING USE OF PRIVATE ROAD

(Title)

LET the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting *to* be used any part of the lane at, the soil of which belongs to the plaintiff, as a carriage way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT

(Title)

It is ordered that the following accounts and inquiries be taken and made;
that is to say :

In creditor's suit

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees

2. That an account be taken of the legacies given by the testator's will.

In suit 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 comes 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 inquiries be made, and accounts taken, that is to say

(a) An inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(b) An inquiry what are the in-cumbrances (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 in-cumbrances, and to include a statement of the priorities of such of the in-cumbrances 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 in-cumbrances (if any) of such in-cumbrancer as shall consent to the sale and subject to the in-cumbrances of such of them as shall not consent.

12. And it is ordered that G.H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the and that in case any doubt or difficulty shall arise the papers shall be submitted to the judge to settle.

13. And it is further ordered that, for the purpose of the inquiries 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 final decree to the day, of such part only of this decree is to be used as is applicable to the particular case.

No. 18

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

(Title)

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of , amounting together to the sum of Rs.
2. Let the of the said Court tax the costs of the plaintiff and defendant in this suit, and let, the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered *to* be paid into Court as aforesaid, as follows : -
 - (a) The costs of the plaintiff to Mr. his attorney [*or* pleader] *or* and the costs of the defendant to Mr. his attorney [*or* pleader].
 - (b) And (*if any debts are due*) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant 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. 19

**PRELIMINARY DECREE IN AN ADMINISTRATION SUIT BY A LEGATEE WHERE
AN EXECUTOR IS HELD PERSONALLY LIABLE, FOR THE PAYMENT OF
LEGACIES.**

(Title)

1. IT' is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;
2. And it is ordered that an account be taken of what is due for principal .and interest on the said legacy.
3. And it is also order that the defendant do, within weeks after the date of the certificate of the pay to the plaintiff the amount of what the shall certify to be due for principal and interest:
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ. _____

No. 20

"FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(Title)

1. LET the of the said Court tax the costs of the plaintiff and defendant in this suit" and, let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs.' the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E.F* the intestate, within one week after the taxation of the said cost 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 defendants costs as aforesaid, be paid and applied by defendant as follows :

(a) Let the defendant, within ,one week after the taxation of the said costs by the as aforesaid, pay one-third share of the said residue to the plaintiffs *A.B.*, and *C.D.*, his wife, in her right as the sister and one of the next-kin of the said *E.F.*, the intestate.

(b) *Let* the defendant retain for her own use on other hand 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 cost by the as aforesaid, pay, the remaining one-third share of the ,said residue to *G.H.*, as the brother and the other next-of-kin of the said *E.F.*, the 'intestate.

No. 21

**PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERS 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 good will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned" and the stock-in-trade, be sold on the premises, and that the *may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done, be completed, before the day of and, that the, *do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of
....

No. 22
FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE
TAKING OF PARTNERSHIP ACCOUNTS.
(Title)

IT is ordered that the fund now in Court, amounting to the sum of, 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 of the partnership assets, of the sum of Rs. of the said sum of Rs. , being the residue of the said sum of Rs. now in Court, to be 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,*Rs. ,due to him, which will then remain due.

No. 23
DECREE FOR RECOVERY OF LAND AND MESNE PRIGHTS
(Title)

IT is hereby decreed as follows :

1. That the defendants do put the plaintiff in possession of property specified in the schedule hereunto annexed.

2. That the defendants do pay to the plaintiff the sum of Rs. - with interest thereon at the rate of per cent per-' annum to the date of realization on account of mesne profits which have accrued due, prior to the institution of the suit. .. '

Or

2. That an inquiry be made as to the amount of mesne Profits 'which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery possession to the decree-holder]

[The relinquishment of Possession by the judgment debtor will notice to the decree-holder through the Court, the expiration of three years from the date of the decree].

SCHEDULE

APPENDIX E

EXECUTION

**No.1NOTICE TO SHOW CAUSE WHY PAYMENT OR ADJUSTMNET SHOULD NOT
BE RECORDED AS CERTIFIED (O. 21, r.2)**

(TITLE)

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of Rs recoverable under the decree has been paid/ adjusted-and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why the Payment/ Adjustment –aforesaid should not be recorded as certified.

Given under my hand and the seal of the Court, this of day of 19 .

No. 2
PRECEPT (Section 46)
(Title)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of at
under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property
specified in the annexed schedule and to hold the same pending any application which may be
made by the decree-holder for execution of the decree.

Schedule

Dated the day of 19.

Judge

No. 3
ORDER SENDINO 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 execution of the decree in the above suit by the said Court, alleginz that
the judgment-debtor resides or has property within the local limits of the jurisdiction of the said
Court, and it is deemed necessary and proper to send a certificate to the said Court under Order
XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered :

That a copy of this order be sent to
with a copy of the decree and of any order which may have been made for execution of the same
and a certificate of non-satisfaction. .

Dated the day of 19 .

Judge

No.4

CERTIFICATE OF NON-SATISFICATION OF DECREES (O. 21, r.6)
(TITLE)

CERTIFIED that no (1) satisfaction of the decree of this Court in Suit No. of 19, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19.

Judge

(1) if *partial*, strike out "no", and state to what extent.

NO. 5
CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER
COURT (O. 21, r. 6)
(TITLE)

Number of suit and the Court by which decree was passed	Number of parties	Date of application for execution	Number of the execution case	Process issued and dates of service thereof	Costs of execution	Amount realized	How the case is disposed of.	Remarks
1	2	3	4	5	6	7	8	9
					Rs .A. P	Rs. A. P.		

Signature of Muharrir in charge

Signature of Judge

NO. 6**APPLICATION FOR EXECUTION OF DECREE. (0.21, r. 11)**

In the Court of

I

decree-holder, hereby apply for execution of

The decree herein below set forth:-,

No. of suit	Names of parties	Date of decree	Whether any appeal preferred from decree	Payment or adjustment made, if any	Previous application, if any, with date and result	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree	Amount of costs, if any awarded	Against whom to be executed	Mode in which the assistance of the Court is required
1	2	3	4	5	6	7	8	9	10
789 of 1897	A.B-Plaintiff C.D-Defendant	October 11 th , 1897	No.	None	Rs. 72-4 recorded on application, dated the 4 th March. 1899	Rs. 314-8-2 principal [interest at 6 percent 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, .2, 4	Against the defendant C.D	[When attachment and sale of movable property is sought] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's movable 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
believe
Dated the
290

Declare that what is stated herein is true to the best of my knowledge and
Signed, decree-holder

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 land and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed *decree-holder*

No.7

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE. ¹[(0.21, r. 16)]
(Title)

To

WHEREAS

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 (0.21, 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.

Decree			
--------	--	--	--

¹ Subs. by the Repealing and Amending Act, 1914 (10 of 1914) s.2 and First Sch, for "(O.21, r.22)".

Principal			
Interest			
Cost			
Costs of execution			
Further interest			

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 property of the said as set forth the on the schedule hereunto annexed, or which shall be, pointed out, to you by the said, and unless the said shall pay to you the said sum of Rs. together with Rs. , the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19,with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19
Schedule Judge

No.9

**WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED
BY DECREE. (0. 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. (0. 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 specilled 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 objection 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. (0. 21, L 35)

(Title)

To
The Bailiff of the Court.
WHEREAS the under mentioned property in the occupancy of has been decreed to the plaintiff in this suit.

You are hereby directed to put the saidin 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(0.21, r. 37)**

(Title)

To
WHEREAShas made application to this Court for execution of decree in Suit No. of 19 by arrest and imprisonment afyour 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 prision 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. (0. 21, r. 38)
(Title)

To

"The Bailiff of the Court.

WHEREAS

the Court in Suit No.

was adjudged by a decree of the Court in Suit No. of 19

,dated the

Decree			
Principal			
Interest			
Cost			
Execution			
Total			

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.

Your further commanded to return this warrant on or before the day of . 19 , With an endorsement certifying

the day on which and manner,in which it has been executed, or 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 JUDGEMENT-DEBTOR TO JAIL. (0. 21 , r, 40)
(Title)

To

The Officer in charge of the Jail at

WHEREASwho has been brought before this Court the 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 commanded and required to take and receive the said into prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, ot the said shall, be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 19008

GIVEN under my signature' add 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. 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 Sui 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
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 EXE.CUTION
PROHIBITORY ORDER WHERE THE, PROPERTY CONSISTS OF SHARES IN THE
CAPITAL OF A CORPORATION. (O. 21, r. 46)
(Title)**

To

Defendant and

Secretary of _____ Corporation,

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 you, the defendant, be, and you are hereby, prohibited and restrained, until the
further order of this Court, from making any transfer of _____ shares in the aforesaid
Corporation, namely,

_____ or from receiving payment of any dividends thereon; and you, _____, the Secretary
of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or
making any such payment

GIVEN under my hand and the seal of the Court, this day of _____ 19____

Judge

No. 19
ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY
COMPANY OR LOCAL AUTHORITY. (O. 21, r. 48)
(Title)

TO

WHEREAS

Judgment-debtor in the above named case, is a (*describe office of judgment debtor*) receiving his salary (or allowance) 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 and the said 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
PUBLIC OFFICER (O. 21, r. 52)
(Title)

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure 1908, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed on what account, etc.*), I request that you will hold the said money of 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 *or* 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 applitation 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 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 person 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

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, *E.TC.* IN THE HANDS OF A THIRD PARTY. (O. 21, r. 56)

GIVEN under my hand and the seal of the Court, this day of 19 .

No. 26

GIVEN under my hand and the seal of the Court, this day of 19 .

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 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 endorsement certifying the manner 'in which it has been executed, or reason why it hoo not been executed.

GIVEN under my hand and the seal of the Court this day of 19 .
Judge

No. 28.
NOTICE OF THE DAY FIXBD FOR SETTLING A SALE PROCLAMATION
(O. 21, r. 66)
(Title)

To

WHEREAS in the above-named suit Judgment-debtor holder, has applied for the sale of , the decree
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, (0. 21, r. 66)
(Title)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of -(1) SuitNo. of the attached property mentioned in the annexed 19 ,decided by the schedule, in satisfaction of the claim of the decree of in which holder in the suit (1) mentioned in the margin, was plaintiff and amounting with costs and interest up to date of was defendant sale to the sum of

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 specifeci and of the costs of sale beign 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 authorised agent. No bid by, or behalf *of*, the judgment-creditors above mentioned, 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 decline 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
- 302

such declaration a deposit 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 think fit, be forfeited to Government and the defaulting purchaser shall forfeit an claim to the property or to any part of the sum for which it may be subsequently sold.

GIVE" under my hand and the seal of the Court, this day of 19.

Judge

Schedule of Property

No. of lot	Description of property to be sold, with the name of each owner where there are more judgment debtors than one.	The revenue assessed upon the estate or part of the estate if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims if any which have been put forward to the property and any other known particulars bearing on its nature and value

No. 30

**ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE
(O. 2, r, 66) (Title)**

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 , has been fixed for the sale of the said property _____ copies of the proclamation 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 the price of the said property amounting to Rs. _____, and that the expenses attending such resale amounted to Rs. _____, making a total of Rs. _____ which sum is recoverable from the defaulter.

Dated the _____ day of _____ 19

Officer holding the sale

To

Judge

(*Title*)

Judge

No. 34

**PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARE 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 hereby, prohibited from making 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 AUTHORISING 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 authorise 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.

_____ *Description of property*
GIVEN under my hand and the seal of the Court, this _____ day of _____ 19. _____
Judge

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.
(O. 21, rr. 90, 92) ,
(Title)

Judge.

**NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE. (O 21, rr. 90,
92)
(Title)**

Judge

No. 38

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94)
(Title)

This is to certify that _____ has been declared the purchaser at a sale by public auction on the _____ day of 19____, of _____ in execution of decree in this suit, and that the said sale has been-duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this _____ day of 19____, _____, *Judge.*

No. 39

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. _____ 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 COMMITAL (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 prison;

You are hereby commanded and required *to* take and receive the said into 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 authorised *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

Principal			
Interest			
Costs			
Total			

is about to;These are to command you to demand and receive
from the said the sum of Rs. as
sufficient to satisfy the plaintiff's claim, and unless the said
sum of Rs. is forth with 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 some 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:

Your 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 _____ 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 w. 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, 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 fulfill any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do; These are to command you to attach , the property of the said, and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19

Judge

No.8

TEMPORARY INJUNCTIONS. (O, 39, r. 1)

(Title)

Upon motion made unto this Court by . pleader
of [or Counsel for] the plaintiff A.B., and upon reading the petition of th 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. J: This Court cloth order that an injunction be awarded to restrain the defendant
c.D., his servants, agents and workmen, from pulling down, or suffering to be pulled down, the
house in the plaint in the said suit of the plaintiff mentioned [or in the written statement, or
petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No.9,
Oilmongers Street, Hindupur, in the Taluk of, and from selling the materials whereof
the said house is oomposed, until the hearing of this suit or until the further order of this Court.

Dated this day of 19

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 without 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 work. men, 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 CD., 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 plaintiff's 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 Trademarks*] 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 interjering in the business*]

to restrain the defendant CD., 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. ¹[9]

APPOINTMENT OF A RECEIVER. (O. 40, r. 1)

(*Title*)

To

WHEREAS _____ has been attached in execution of a decree passed in the above suit on the _____ day of _____ 19____, in favour of ; _____ You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in

¹ The number of the form, originally misprinted as 6, was corrected by the Repealing and Amending act, 1914 (10 of 1914), s.2 and First Sch.,

² The number of the form, originally misprinted as 7, was corrected, *ibid*.

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. 2[10]
BOND TO BE GIVEN BY RECEIVER, (O. 40, r. 3)
(Title)

KNOW I all men by these presents, that we, and
 and , are jointly and severally bound to
 of the Court of in Rs.
Lto be paid to the said or his successor in office
for the time being. For which payment to be made we bind ourselves, and each of us, in the
whole, our and each of our heirs, executors and administrators, jointly and severally, by these
presents.

Dated this day of 19 .

Whereas a plaint has been filed in this Court by against for the' purpose of [*here insert
the object of suit*] :

And whereas the said has been appointed,
by order of the above-mentioned Court, to receive the rents and profits of the immovable
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 immovable 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 froll1 time to time be certified to be due from him as the said Court hath directed or shall
hereafter direct, then this obligation shall ,be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of .

*Note.-If deposit of money is made, the memorandum thereof should follow the terms of the
condition of the bound.*

APPENDIX G
APPEAL, REFERENCE AND REVIEW

No.1

MEMORANDUM OF APPEAL (O. 41, r. I)

(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 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

(Signed)

Witnesses

- 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. _____
having sued _____, the defendant, in this Court and
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 representatives will be personally liable to pay the balance. To this effect I execute this security bond this _____ day of _____ 19____.

Schedule

(Signed)

Witnesses

- 1.
- 2.

No. 4

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10)

(Title)

To

THIS security bond for costs of appeal executed by
witnesseth:---

This appellant has preferred an appeal from the decree in Suit No. _____ of 19____, against the respondent, and has been called upon to furnish security, Accordingly I, of my own free will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed; I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient

to pay the amount due, I and my legal representatives will be personally liable to pay the balance.
To this effect I execute this security bond this day of 19 .

Schedule

(Signed)

Witnessed by

- 1.
- 2.

No. 5

INTIMATION OF 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 said with all practicable despatch all mataterial papers in the suit.

Dated the day of 19.

Judge

No.6

NOTICE TO REEPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL (O. 41, r. 14)

(Tille)

APPEAL from the of the Court of dated the day of 19.

To

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 19 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised 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 appearances 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 seat of the Court, this _____ day of _____ 19.

Judge

NO. 8

MEMORANDUM OF CROSS OBJECTIONS. (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, 1908, and sets forth the following grounds of objection to the appealed from namely:-

No.9

DECREE IN APPEAL. (O. 41, r. 35)

(Title)

Appeal No. _____ of 19 _____ from the decree of the Court _____ dated the _____ day of _____ 19.

Memorandum of Appeal

Plaintiff

Defendant

The _____ above-named appeals to the _____ Court at _____ from the decree of _____ 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, _____ for the appellant and of _____ for the respondent, it is ordered

The costs of this appeal, as detailed below, amount 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 *forma pauperis* (O. 44, r. 1)

(Title)

I _____ theabove-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 *INFORMA 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 TRE 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, theCode of Civil Procedure, 1908, 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, 1908 :

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 seat of the Court, this day of 19.

Registrar

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 this, Court, _____ this _____ day of _____ 19____.

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No. 2

**NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER
COURT FOR TRIAL (SECTION 24)**

In the Court of the District Judge of
No. of 19

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 the 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)

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 parle*.

GIVEN under my hand and the seal of the Court this day of 19.

Judge

No.5

**LISTS OF DOCUMENTS PRODUCED BY PLAINTIFF (O. 13, r.1)
DEFENDANT**

(Title)

No.	Description of documents	Date, if any, which the document bears	Signature of party or pleader
1	2	3	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 clay of 19 .

Judge

No.7
COMMISSION TO EXAMINE ABSENT WITNESS. (0. 26, rr. 4, 18)
(Title)

To _____
WHEREAS the evidence of _____ is required by the _____ in the above suit;
and whereas _____; you are requested to take the evidence on interrogatories [or *viva voce*] of such witness, and you are hereby appointed Commissioner for that purpose. The
evidence will be taken in the presence of the parties or their agents if in attendance, who will be
at liberty to question the witness on the points specified, and you are further requested to make
return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having
jurisdiction on your application.

A sum 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 (0. 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 the said suit the plaintiff claims.

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 its 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 (any 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 *viva 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 call books, letters, papers and documents produced 'upon such examination to be duly marked *for* identification, and that you will be 'further pleased to .authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other.witnesses to the said Court.

(Note.-If the request is directed to a Foreign Court, the words "through ¹[the ²[Federal Government] for transmission" ,should be inserted after the words "other witnesses" in the last line of this form.)

No.9
COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS
(O. 26, rr. 9, 11)
(Title)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal 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 speified in and according to the rights as declared in the decree of this Court dated the day of 19 ; you are here by 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 a lot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

¹ Subs. by A.O., 1949, for "His Majesty's Secretary of State for Foreign Affairs".

² Subs. by F.A.O., 1975, Art. 2 and Table, foro "Central Government".

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, I 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 defendrit, 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 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 inset the name of the 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. 6)
(Title)

To

WHEREAS has applied to this Court for permission to institute a suit against _____ in *forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas heday of _____ 19 ____ has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the 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 _____ dya 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.

		plaintiff			defendant			Claim			Appearance			Judgment			Appeal			Execution			Return of Execution																														
Date of Presentation of plaint		Number of suit		Name		Description		Place of residence		Name		Description		Place of residence		Particulars		Amount or value		When the cause of action occurred		Day of parties to appear		Plaintiff		Defendant		Date		For whom		For what or amount		Date of decision		Judgment in appeal		Date of application		Date of order		Against whom		For what amount of money		Amount of costs		Amount paid into Court		Arrested		Minute of other Return than Payment or arrest, and date of every Return	

No.15

REGISTER OF APPEALS (O.41, r. 9)

COURT (OR HIGH COURT) AT

REGISTER OF APPEALS FROM DECREE IN THE YEAR 19.

		Appellant			Respondent				Decree appealed from			Appearance			Judgment		
Date of memorandum		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 THIRD SCHEDULE

(See section 69)

EXECUTION OF DECREES BY COLLECTORS

1. Powers to Collector: 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.

2. Procedure of Collector in special cases: 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.

3. Notice to be given to decree holders and to persons having claims on property: (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 there-under;

(b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the Court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy

of the notice shall be sent to him by post or otherwise.

4. Amount of decree for payment of money to be ascertained and immovable property available for their satisfaction:- (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent *of* the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction *of* such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance "with such decision.

5. When District Court may issue notices and hold inquiry: 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 sp 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.

6. Effect of decision of Court as to dispute:- 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.

7. Scheme for liquidation of decree for payment of money: - (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 he 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 in-cumbrance, the Collector may discharge the claim of any in-cumbrance which has become payable or compound the claim of any in-cumbrancer 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 in-cumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the ¹[Provincial Government.]

8. Recovery of balance (if any) after letting or management: 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. ' '

9. Collector to render accounts to Court: - (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 c9me 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 ²[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 my witnesses summoned by him.

¹ Subs. by A.O., 1937, for "L.G.".

² The original words "the Government" were first subs. by A.O., 1937, and then amended by A.O., 1961, Art. 2 (with effect from the 23rd March, 1956), to read as above.

(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 proper_¥, 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 in-cumbrances on the property;

(ii) Where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit ; and

(iii) In discharging rateably the claims of the original decree-holder and another decree-holder 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 paid out of such 'property or 'balance 'until the decree- holders who have obtained such order have been satisfied, and be residue (if any) shall be paid to the 'judgment-debtor or such other person as the Court directs.

10. Sales how to be conducted: Where the Collector sells any property under this schedule, he shall put it up to public auction will, one or more lots, as he thinks fit, and may

(a) Fix a reasonable reserved price for each lot;

(b) Adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;

(c) Buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

11. Restrictions as to alienation by judgment debtor or his representative, and Prosecution of remedies by decree-holder : - (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.

12. Provisions where property is in several district: 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 l[Provincial Government] may *by* general rule or special order direct.

13. Powers of Collector to compel attendance and production: In exercising the powers conferred 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 Fourth Schedule: - [Enactments amended.] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Second Schedule.

THE FIFTH SCHEDULE: - [Enactments repealed.] Rep. by the Second Repealing and Amending Act, 1914 (XVII of 1914), s. 3 and Second Schedule.
