

S U P P L E M E N T  
TO  
O F F I C I A L   G A Z E T T E  
O F   T H E



Published under the authority of His Excellency the Governor of East Africa.

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Vol. XIX.—Supplement No. 1.   NAIROBI, January 31, 1917.

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*His Excellency has approved of the following Bills being introduced at the next Session of the Legislative Council.*

**T. S. W. THOMAS,**  
*Clerk to the Legislative Council.*

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# A Bill

## Intituled

An Ordinance to apply a Sum of Money for the Service of the year ending the 31st day of March, 1918.

1. This Ordinance may be cited as the "Appropriation Ordinance, 1917."

2. The Public Revenue for the year 1917-18, and other funds of the East Africa Protectorate, are hereby charged towards the service of the year ending the thirty-first day of March, one thousand nine hundred and eighteen, with a sum of

3. The money granted by this Ordinance shall be applied to the purposes and services expressed in the Schedule annexed hereto.

4. The Treasurer of the Protectorate is hereby authorised and required, from time to time, upon the warrant or order of the Governor to pay out of the Revenue and other funds of the Protectorate, for the several services specified in the Schedule, the said sum of

which will come in course of payment during the year ending on the thirty-first day of March, one thousand nine hundred and eighteen.

## SCHEDULE.

DIVISION	AMOUNT.
	£
1. Rent and Interest to H. H. the Sultan of Zanzibar ...	17,000
2. Pensions and Gratuities...	7,820
3. His Excellency the Governor ...	7,821
4. Secretariat ...	6,977
5. "Official Gazette" and Printing ...	6,934
6. Provincial Administration ...	158,248
6a. Provincial Administration—Special Expenditure ...	8,300
7. Treasury ...	10,860
8. Customs Department ...	18,784
9. Port and Marine Departments ...	6,528
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Carried forward ...	250,852

## Schedule.—Contd.

DIVISION.			AMOUNT.
			£
Brought forward ...			250,852
10.	Audit Department	...	4,934
11.	Legal Departments	...	21,137
12.	Police	...	67,963
13.	Prisons	...	19,777
14.	Medical Departments	...	60,099
15.	Laboratories	...	4,224
16.	Education	...	9,095
17.	Transport	...	4,315
18.	Military Expenditure	...	128,133
18a.	Military—Special Expenditure	...	10,289
19.	Miscellaneous Services	...	10,360
20.	Post Office and Telegraphs	...	60,770
20a.	Post Office and Telegraphs—Special Expenditure	...	3,600
21.	Railway Department	...	492,198
21a.	Railway Department—Special Expenditure	...	9,800
21b.	Busoga Railway	...	44,033
21c.	Port Bell-Kampala Railway	...	6,050
22.	Agricultural Department	...	38,606
22a.	Agricultural Department—Special Expenditure	...	2,500
23.	Forest Department	...	13,412
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30.	Public Works Extraordinary	...	55,567
32.	Coast Land Settlement	...	5,343
33.	Loan Charges	...	29,370
Total ...			£ 1,484,075

# A Bill

## Intituled

### An Ordinance to amend the Law Relating to Banking.

1. This Ordinance may be cited as "The Bank Amendment Ordinance, 1917," and shall be read together with the Bank Ordinance, 1910, hereafter referred to as the Principal Ordinance. Short title.

2. Notwithstanding anything to the contrary in the Principal Ordinance contained the Governor may in his absolute discretion by Proclamation declare any Bank duly constituted in any British Dominion or Colony in accordance with the laws for the time being in force therein relating to the formation of Companies, and engaged in the business of banking within the Protectorate to be a British Bank for the purposes of the Principal Ordinance. Power to declare a Colonial Bank to be a British Bank.  
Provided that such declaration shall not be made unless and until such bank has shewn to the Governor's satisfaction that the law under which such bank is constituted provides adequate safeguards for control over its operation.

3. Part III of the Principal Ordinance shall not apply to any Bank declared under this Ordinance to be a British Bank. Part III of Principal Ordinance not to apply.

4. (1) Every Bank declared under this Ordinance to be a British Bank shall within 60 days after the 31st December in each year forward or cause to be forwarded to the Governor in duplicate a list of all persons who on such 31st December are members of the company and all persons who have ceased to be members since the date of the last return made hereunder. Lists and summaries to be made.

(2) The list shall state the names, last known addresses and occupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return specifying shares transferred since the date of the last return by persons who are still members and have ceased to be members respectively and the dates of the registration of the transfers and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash and specifying the following particulars:—

(a) The amount of the share capital of the company and the number of the shares into which it is divided.

(b) The number of shares taken from the commencement of the company up to the date of the return.

(c) The amount called up on each share.

(d) The total amount of calls received.

(e) The total amount of calls unpaid.

(f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last return.

(g) The total number of shares forfeited.

(h) The total amount of shares or stock for which share warrants are outstanding at the date of the return.

(i) The total amount of share warrants issued and surrendered respectively since the date of the last return.

(k) The number of shares or amount of stock comprised in each share warrant.

(l) The names and addresses of the persons who at the date of the return are the directors of the company or occupy the position of directors by whatever name called and

(m) The total amount of debt due from the company in respect of all mortgages and charges.



(3) The summary shall also include a statement made up to such date as may be specified in the statement in the form of a balance sheet audited by the company's auditors and containing a summary of its share capital its liabilities and its assets giving such particulars as will disclose the general nature of those liabilities and assets and how the values of the fixed assets have been arrived at but the balance sheet need not include a statement of profit and loss. 5

(4) The above list and summary shall be signed by the manager or by the Secretary of the company. 10

(5) If a Bank declared under this Ordinance to be a British Bank makes default in complying with the requirements of this section it shall be liable to a fine not exceeding Rs. 75/- for every day during which the default continues.

Statements to be made. 5. (1) Every Bank declared under this Ordinance to be a British Bank shall within 60 days after the 31st December in each year forward or cause to be forwarded to the Governor two copies of a statement in the form set out in the Schedule to the Principal Ordinance. Every such statement shall be signed by a director. 15 20

(2) If default is made in compliance with this section the Bank shall be liable to a fine not exceeding Rs. 75/- for every day during which the default continues.

Statements, lists and summaries to be filed with Registrar of Companies. 6. One copy of every statement, list and summary received by the Governor under the provisions of this Ordinance shall be filed at the office of the Registrar of Companies and may there be inspected and copies thereof may be obtained in the manner and on payment of the fees prescribed for the inspection and copies of similar documents relating to the companies registered in the Protectorate. 25 30

# A Bill

## Intituled

### An Ordinance to amend the Criminal Law.

1. This Ordinance may be cited as "The Criminal *Short title.*  
Law Amendment Ordinance, 1917."

2. Whoever shall publicly advertise a reward for the return of any property whatsoever which he or any other person shall  
5 have been deprived by any offence punishable under the Indian Penal Code as applied to the Protectorate or which has been lost and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in  
10 any public advertisement purporting that a reward will be given or paid for any property of which any person shall have been deprived by any offence punishable under the Indian Penal Code as applied to the Protectorate or which shall have been lost  
15 without seizing or making any inquiry after the person producing such property or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property of which any person shall have been deprived by any  
20 offence punishable under the Indian Penal Code as applied to the Protectorate or which shall have been lost the money so paid or advanced or any other sum of money or reward for the return of such property or shall print or publish any such advertisement shall be liable to a fine not exceeding Rs. 750/- or to a term of imprisonment of either description not exceeding six months or to both.

Criminal  
advertisements.

# A Bill

## Intituled

### An Ordinance to provide for the Discipline of the Crews of Vessels Chartered or Requisitioned by the Admiralty.

1. This Ordinance may be cited as "The Merchant Seamen Short title. Discipline Ordinance, 1916".

2. (1) If whilst within the jurisdiction a seaman lawfully engaged in accordance with the Merchant Shipping Acts, 1894 to 1914, to serve on board any British ship belonging to or chartered or requisitioned by the Admiralty:— Offences.

(a) Neglects or refuses without reasonable cause to join his ship or to proceed to sea in his ship, or is absent without leave from his ship or from his duty at any time; or

(b) Joins his ship or is whilst on board his ship in a state of drunkenness so that the performance of his duties or the navigation of his ship is thereby impeded,

he shall be guilty of an offence; and the Master Mate or Owner of the ship or his Agent or any Commissioned Naval Officer may with or without the assistance of any Police Officer convey on board his ship any seaman whom he has reason to believe to be guilty of an offence under this section, and may also arrest him without first procuring a warrant, and Police Officers are hereby directed to give assistance if required. Provided always that no Commissioned Naval Officer acting in pursuance of the powers aforesaid shall be liable to any penalty or to any action for damages for false imprisonment.

(2) If such seaman is brought before a Magistrate holding a Subordinate Court of the First Class on charge of having committed an offence under this section, he shall, if the offence comes within the provisions of paragraph (a) of sub-section (1) of this section be liable to the penalties prescribed for such offences in section 221 of the Merchant Shipping Act, 1894, and if the offence comes within the provisions of paragraph (b) of sub-section (1) of this section he shall be liable to a fine not exceeding Rs. 75/-. Penalties.

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# A Bill

**Intituled**

An Ordinance to make provision for Procedure in Civil Court.

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# A Bill

## Intituled

### An Ordinance to make Provision for Procedure in Civil Court.

#### PRELIMINARY.

1. (1) This Ordinance may be cited as the Civil Procedure Ordinance, 1916.

Short title,  
commence-  
ment, and  
extent.

(2) It shall come into force on such date as the Governor may by notice in the *Official Gazette* declare.

5 (3) It shall extend to proceedings in the High Court and subject to the provisions of the East Africa Order in Council, 1902 and the Courts Ordinance, 1907, to proceedings in all Subordinate Courts in the East Africa Protectorate, other than Native Subordinate Courts.

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

Definitions.

(1) "Advocate" means any person entitled to appear and plead for another in Court.

15 (2) "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a  
20 25 or section 36 but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.

*Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the  
25 30 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.

30 (4) "district" means the local limits of the jurisdiction of a Subordinate Court.

(5) "foreign Court" means a Court situate beyond the limits of the East Africa Protectorate which has no authority in the Protectorate.

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

(7) "Judge" means the presiding officer of a civil Court.

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

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

(10) "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. 5

(11) "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. 10

(12) "moveable property" includes growing crops. 15

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

(14) "Ordinance" includes rules.

(15) "prescribed" means prescribed by rules.

(16) "public officer" means a person falling under any of the following descriptions namely:— 20

(a) every Judge;

(b) every member of the Protectorate Civil Service;

(c) every commissioned or gazetted officer in the military or naval forces of His Majesty while serving in the Protectorate; 25

(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; 30

(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; 35

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of the Government, or to make, authenticate, or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and 40 45

(h) every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty. 50

(17) "rules" means rules and forms contained in the first Schedule or made by the High Court to regulate its own procedure or the procedure of subordinate civil Courts.

(18) "share in a corporation" shall be deemed to include stock, debenture stock, debentures, or bonds. 55

(19) "signed" includes the affixing of a mark by a person unable to write.

#### Savings.

3. In the absence of any specific provision to the contrary nothing in this Ordinance 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. 60

#### Pecuniary jurisdiction.

4. 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. 65

## PART I.

## SUITS IN GENERAL.

5. 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. Courts to try all civil suits unless barred

5 *Explanation.*—A suit in which the right to property or 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.

6. 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 having jurisdiction in the Protectorate to grant the relief claimed, or before His Majesty in Council. Stay of suit.

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

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

*Explanation.* (1)—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.* (2)—For the purposes of this section, the competence of a Court shall be determined irrespective of any provision as to right of appeal from the decision of such Court.

*Explanation.* (3)—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.

35 *Explanation.* (4)—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.

40 *Explanation.* (5)—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.

45 *Explanation.* (6)—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 persons so litigating.

8. 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 Ordinance applies. Bar to further suit.

9. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except:— When foreign judgment not conclusive.

55 (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 the Protectorate in cases in which such law is applicable;

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

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in the Protectorate;

Presumption  
as to foreign  
judgments.

10. 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.

Court in  
which suits  
to be institu-  
ted.

11. Every suit shall be instituted in the Court of the lowest grade competent to try it, provided that where there are more subordinate Courts than one with concurrent jurisdiction in the same district competent to try it a suit may be instituted in any one of such subordinate Courts.

Suits to be  
instituted  
where subject  
matter  
situate.

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

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

(b) for the partition of immoveable property,

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

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

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,  
shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

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

*Explanation.*—In this section property means property situate in the Protectorate.

Suits for im-  
moveable  
property  
situate within  
jurisdiction of  
different  
Courts.

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

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

Suits for  
compensation  
for wrongs to  
person or  
moveables.

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

#### *Illustrations.*

(a) A residing in Mombasa beats B in Nairobi. B may sue A either at Mombasa or Nairobi.

(b) A residing in Mombasa publishes at Nairobi statements defamatory of B. B may sue A either in Mombasa or Nairobi.

Other suits to  
be instituted  
where defen-  
dants reside  
or cause of  
action arises.

15. 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 the leave of the Court is given, or the defendants who do not reside, or carry on business, acquiesce in such jurisdiction; or
- (c) the cause of action, wholly or in part, arises.

*Explanation.* (1)—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

*Explanation.* (2)—A corporation shall be deemed to carry on business at its sole or principal office in the Protectorate, 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 Nairobi. B carries on business in Mombasa. B by his agent at Nairobi buys goods of A and requests A to deliver them to the Uganda Railway. A may sue B for the price of the goods either in Nairobi, where the cause of action has arisen, or in Mombasa, where B carries on business.

(b) A resides at Kisumu, B at Nairobi, and C at Mombasa. A, B, and C being together at Nakuru, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Nakuru, where the cause of action arose. He may also sue them at Nairobi, where B resides, or at Mombasa, 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.

16. No objection as to the place of suing shall be allowed by the High Court on appeal unless such objection was taken in the Court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice.

Objections to jurisdiction.

17. Where a suit may be instituted in any one of two or more subordinate Courts, any defendant after notice to the other parties, or the Court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another Court; and the High Court after considering the objections if any shall determine in which of the several Courts having jurisdiction the suit shall proceed.

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

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

Power of High Court to withdraw and transfer cases instituted in Subordinate Courts.

(a) withdraw any suit or other proceeding pending in any Court subordinate to it, and try or dispose of the same; or

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

(c) re-transfer 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 as aforesaid, the Court which thereafter tries such suit may either re-try it or proceed from the point at which it was transferred or withdrawn.

#### INSTITUTION OF SUITS.

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

Institution of suits.

#### SUMMONS AND DISCOVERY.

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

Summons to defendant.



Service of  
summons  
where defen-  
dant resides  
in another  
district.

21. (1) A summons may be sent for service in another district to a Court having jurisdiction in that district.

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

Power to  
order disco-  
very and the  
like.

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

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

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

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

Summons to  
witness.

23. The provisions in sections 20 and 21 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for  
default.

24. The Court may compel the attendance of any person to whom a summons has been issued under section 22, and for that purpose may

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

#### JUDGMENT AND DECREE.

Judgment  
and decree.

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

Interest.

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

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

Costs.

27. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid.

The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

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

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

## PART II.

## EXECUTION.

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

Application  
to orders.

29. 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

Definition of  
Court which  
passed a  
decree.

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

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

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

Court by  
which decree  
may be  
executed.

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

Transfer of  
decree.

(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 such other Court; or

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

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

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

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

Result of  
execution pro-  
ceedings to  
be certified.

33. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

Powers of  
Courts in  
executing  
transferred  
decree.

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

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

Questions to  
be determined  
by the Court  
executing  
decree.

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

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

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

Execution  
barred in  
certain cases.

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

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

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

(2) Nothing in this section shall be deemed

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

(b) to limit or otherwise affect the operation of article 180 of the second Schedule of the Indian Limitation Act, 1877 or other provision of law substituted therefor.

Transferee.

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

Legal representative.

37. (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.

Powers of  
Court to  
enforce  
execution.

38. 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 without attachment, of any property;

(c) by arrest and detention in prison of any person;

(d) by appointing a receiver; or

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

Enforcement  
of decree  
against legal  
representative.

39. (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.

Arrest and  
detention.

40. (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his detention may be in any civil prison of the province in which the Court ordering the detention is situate, or, if such prison does not afford suitable accommodation, in any other prison which the Governor may direct;

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

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

Provided, thirdly, that if the room is in the actual occupancy of a woman who is not the judgment-debtor, and who according to the custom of her community 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 Governor may, by notification in the 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 he may direct.

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

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

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

Women not arrested in execution of decree for money.

42. The Governor may by notice in the Official Gazette fix scales, graduated according to rank, race, and nationality, of monthly allowances payable for the subsistence of a judgment-debtor.

Subsistence allowances.

43. (1) Every person detained in a civil prison in execution of a decree shall be so detained

Detention and release.

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months; and  
(b) in any other case, for a period of six weeks :

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

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

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

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

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

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

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

Release on  
ground of  
illness.

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

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

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

(a) by the Superintendent of the prison in which he is confined on the grounds of the existence of any infectious or contagious disease, or

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(b) by the committing Court or the High Court on the ground of his suffering from any serious illness.

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

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Property  
liable to  
attachment  
and sale in  
execution of  
decree.

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

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35

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

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, and of his wife and children ;

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(b) tools of artisans ;

(c) books of accounts ;

(d) a mere right to sue for damages ;

45

(e) any right of personal service ;

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

50

(g) allowance being less than the salary of any public officer or of any servant of a railway company or local authority while absent from duty ;

(h) the salary or allowances equal to salary of any such officer or servant as is referred to in clause (i), while on duty, to the extent of

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(i) the whole of the salary, where the salary does not exceed twenty rupees monthly;

(ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and

5 (iii) one moiety of the salary in any other case;

(i) the pay and allowances of persons to whom the Articles of War apply;

(j) the wages of labourers and domestic servants whether payable in money or in kind;

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

(l) a right of future maintenance;

(m) any fund or allowance declared by law to be exempt from attachment or sale in execution of a decree.

15 *Explanation.*—The particulars mentioned in clauses (f), (g), (h), (i), (j), and (m) are exempt from attachment and sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed to affect the provisions of the Army Act or of any similar law for the time  
20 being in force.

46. (1) No person in executing any process under this Ordinance directing or authorizing seizure of moveable property shall enter any dwelling house after sunset and before sunrise. Seizure of property in dwelling house.

(2) No outer door of a dwelling house shall be broken open  
25 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.

30 (3) The third proviso to section 40 shall apply also to proceedings under this section.

47. (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 and realize such property and shall  
35 determine any claim thereto and any objection to the attachment thereof shall be the Court of the highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached. Property attached in execution of decrees of several Courts.

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

48. 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  
45 against all claims enforceable under the attachment. Private alienation of property after attachment to be void.

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

49. Where immoveable property is sold in execution of a  
50 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 from the time when the sale becomes absolute. Purchaser's title.

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

50. (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 someone through whom the plaintiff claims.

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(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.

Proceeds of execution to be rateably distributed among decree holders.

51. (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 :

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Provided as follows

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

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

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

(i) in defraying the expenses of the sale ;

(ii) in discharging the amount due under the decree ;

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

(iv) 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.

45

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

Resistance to execution

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

55

## PART III.

## INCIDENTAL PROCEEDINGS.

53. Subject to such conditions and limitations as may be prescribed the Court may issue a commission Power of Court to issue commissions.

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

54. (1) A commission for the examination of any person may be issued by the High Court to any subordinate Court, and by a subordinate Court of the first or second class to any other Commission to another Court.  
 10 subordinate Court situate in a district other than the district in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause Letter of request.  
 15 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  
 20 of such order.

55. In lieu of issuing a commission the High Court or a subordinate Court with the sanction of the High Court may issue a letter of request to examine a witness residing at any place not within the Protectorate.

25 56. Commissions issued by foreign Courts for the examination of persons in the Protectorate shall be executed and returned in such manner as may be from time to time prescribed. Commissions issued by foreign Courts.

## PART IV.

## SUITS IN PARTICULAR CASES.

30 57. Aliens other than alien enemies residing in a foreign country may sue in the Courts of the Protectorate as if they were subjects of His Majesty. When aliens may sue.

58. (1) A foreign State may sue in any Court of the Protectorate provided that such State has been recognized by His When foreign state may sue.  
 35 Majesty :

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

(2) Every Court shall take judicial notice of the fact that a Where inter-pleader suit may be instituted.  
 40 foreign State has or has not been recognized by His Majesty.

59. Where two or more persons claim adversely to one another the same debt, sum of money, or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay Where inter-pleader suit may be instituted.  
 45 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 :

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



## PART V.

## SPECIAL PROCEEDINGS.

- Arbitration. 60. All references to arbitration by an order in a suit, and all proceedings thereunder, shall be governed by the provisions contained in the second Schedule.
- Power to state case for opinion of Court. 61. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed. 5
- Public charities. 62. In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Attorney General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney General, may institute a suit, whether contentious or not, in the High Court to obtain a decree
- (a) removing any trustee; 15
  - (b) appointing a new trustee;
  - (c) vesting any property in trustees;
  - (d) directing accounts and enquiries;
  - (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust; 20
  - (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. 25

## PART VI.

## SUPPLEMENTAL PROCEEDINGS.

- Supplemental proceedings. 63. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed 30
- (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; 35
  - (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; 40
  - (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
  - (e) make such other interlocutory orders as may appear to the Court to be just and convenient.
- Compensation for arrest, attachment, or injunction on insufficient grounds. 64. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section 45
- (a) it appears to the Court that such arrest, attachment, or injunction was applied for on insufficient grounds; or
  - (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same, 50
- the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him: 55
- 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. 60

## PART VII.

## APPEALS.

65. No appeal shall lie from a decree passed by the Court with the consent of parties. No appeal from consent decrees.

66. Where any party aggrieved by a preliminary decree passed after the commencement of this Ordinance 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. Appeal from final decree where no appeal from preliminary decree.

67. 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 of any error, defect, or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. No decree to be reversed or modified for error or irregularity not affecting merits of jurisdiction.

68. No second appeal shall lie to the Court of Appeal for Eastern Africa except with the leave of the Court by whom the first appeal was decided. No second appeal to Court of Appeal except with leave of High Court.

69. The Court of Appeal for Eastern Africa shall, unless otherwise expressly provided by any law for the time being in the Protectorate exercise its jurisdiction in appeals from decrees and orders made by the High Court in the following matters only, namely:— Jurisdiction of Court of Appeal for Eastern Africa, how exercised.

(a) in respect of such decrees and orders made by the High Court in the exercise of its original jurisdiction which if made by a subordinate Court would be appealable to the High Court; and

(b) in respect of such decrees and orders made by the High Court in the exercise of its appellate jurisdiction leave to appeal from which has been granted by the High Court.

70. The Court of Appeal for Eastern Africa in dealing with an appeal from the High Court shall have the like power to dispose of the appeal as the High Court may from time to time have to dispose of appeals from subordinate Courts. Powers of Court of Appeal.

71. (1) An appeal shall lie from the following orders and save as otherwise expressly provided in this Ordinance or by any law for the time being in force from no other orders:— Orders from which appeal lies.

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

(b) an order on an award stated in the form of a special case;

(c) an order modifying or correcting an award;

(d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(e) an order under section 64;

(f) an order under any of the provisions of this Ordinance 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;

(g) any order made under rules from which an appeal is expressly allowed by rules.

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

Other orders. 72. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect, or irregularity in any order affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. 5

Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Ordinance, from which an appeal lies, does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. 10

Powers of appellate Court. 73. (1) Subject to such conditions and limitations as may be prescribed, the High Court shall have power on appeal:—

- (a) to determine a case finally;
- (b) to remand a case; 15
- (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 High Court on appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Ordinance on Courts of original jurisdiction in respect of suits instituted therein. 20

Procedure in appeals from orders. 74. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals from orders made under this Ordinance or under any other law in which a different procedure is not provided. 25

## PART VIII.

### REFERENCE AND REVIEW.

Reference to High Court. 75. Subject to such conditions and limitations as may be prescribed, any Court subordinate to the High 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. 30

Review. 76. Subject as aforesaid, any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Ordinance, but from which no appeal has been preferred; 35
  - or
  - (b) by a decree or order from which no appeal is allowed by this Ordinance
- 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. 40

## PART IX.

### RULES.

Rules. 77. (1) The rules in the First Schedule shall have effect as if enacted in the body of this Ordinance until annulled or altered by other rules duly made by the High Court and published in the Official Gazette. 45

(2) Rules made by the High Court shall have effect, unless otherwise expressed in the rules, from the date of their publication in the Official Gazette. 50

(3) The High Court shall have, in addition to any powers to make rules conferred on it by Order in Council, power to make rules in like manner authorizing specified officers of the Court to sign judgments and decrees in undefended cases and to make formal orders in execution of decrees. 55

## PART X.

## MISCELLANEOUS.

78. (1) Women, who according to the customs and manners of their community ought not to be compelled to appear in public shall be exempt from personal appearance in Court. Exemption of certain women.

(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 Ordinance.

79. The provisions of sections 40, 42, 44 shall apply so far as may be to all persons arrested under this Ordinance. Arrest other than in execution of decree.

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

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

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

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

(2) The subordinate Court receiving such warrant or order shall cause the arrest or attachment to be made, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

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

82. (1) The language of the High Court shall be in English. Language of Courts.

(2) Evidence in all Courts shall be recorded in English.

(3) Written applications to the High Court shall be in English and to subordinate Courts in English or Swahili.

83. (1) Any Court may, if it thinks fit, and shall upon the request of either party to a cause or matter pending before it in which questions may arise as to the laws or customs of any tribe, caste, or community, summon to its assistance one or more competent assessors, and such assessors shall attend and assist accordingly. Power to call in assessors.

(2) Every such assessor shall be summoned in such manner as the Court may direct, and shall receive such fees for his attendance as may be prescribed to be paid in such manner as the Court may direct.

Oath on  
affidavit: by  
whom to be  
administered.

84. In the case of any affidavit under this Ordinance 5  
(a) any Court, Magistrate, Registrar of a Court, or Justice  
of the Peace, or  
(b) any officer or other person whom the High Court may  
appoint in this behalf may administer the Oath to the deponent.

Miscellaneous  
proceedings.

85. The procedure provided in this Ordinance in regard to 10  
suits shall be followed as far as it may be applicable in all  
proceedings in any Court of civil jurisdiction.

Orders and  
notices to be  
in writing.

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

Application  
for restitution

87. (1) Where and in so far as a decree is varied or reversed 15  
the Court of first instance shall, on the application of the 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 they would have occupied but for such  
decree or such part thereof as has been varied or reversed; and 20  
for this purpose the Court may make any orders, including orders  
for the refund of costs and for the payment of interest, damages,  
compensation, and mesne profits, which are properly consequential  
on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining 25  
any restitution or other relief which could be obtained by applica-  
tion under sub-section (1).

Enforcement  
of liability of  
surety.

88. Where any person has become liable as surety  
(a) for the performance of any decree or any part thereof;  
or 30  
(b) for the restitution of any property taken in execution  
of a decree; or  
(c) for the payment of any money, or for the fulfilment  
of any condition imposed on any person, under an order of the  
Court in any suit or in any proceeding consequent thereon, 35  
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 34: 40

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

Consent or  
agreement by  
persons under  
disability.

89. In all suits to which any person under disability is a  
party, and consent or agreement as to any proceeding shall, if  
given or made with the express leave of the Court by the next 45  
friend or guardian for the suit, have the same force and effect as  
if such person were under no disability and had given such consent  
or made such agreement.

Execution of  
decree of  
High Court  
before costs  
are as-  
certained.

90. Where the High Court considers it necessary that a decree  
passed in the exercise of its original civil jurisdiction should be 50  
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 55  
of the costs shall be ascertained by taxation.

Enlargement  
of time.

91. Where any period is fixed or granted by the Court for  
the doing of any act prescribed or allowed by this Ordinance, the  
Court may, in its discretion, from time to time, enlarge such  
period, even though the period originally fixed or granted may 60  
have expired.

92. Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Saving of inherent powers of Courts.
- 5 93. Clerical or arithmetical mistakes in judgments, decrees, or orders, or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. Amendment of judgments, decrees, or orders.
- 10 94. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. General power to amend.
- 15 95. Nothing in this Ordinance shall affect any present right of appeal which shall have accrued to any party at its commencement. Saving of present right of appeal.
96. The enactments mentioned in the third Schedule are hereby repealed or amended to the extent specified in the fourth column thereof. Amendments and repeals.
- 20 97. Nothing in this Ordinance shall affect any suit or proceeding begun before the commencement of this Ordinance which shall be prosecuted or continued as though this Ordinance had not come into force. Pending Suits.
- 25 98. Notifications published, declarations and rules made, places appointed agreements filed, scales prescribed, forms framed, appointments made, and powers conferred under Indian Act XIV of 1882, or under any other enactment hereby repealed, shall, so far as they are consistent with this Ordinance, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed, and conferred under this Ordinance and by the authority empowered thereby in such behalf. Continuance of orders under repealed enactments.
- 30 99. In every enactment or notification passed or issued before the commencement of this Ordinance in which reference is made to, or to any chapter or section of, Indian Act XIV of 1882, or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Ordinance or to its corresponding Part, order, section, or rule. Reference to Code of Civil Procedure and other repealed enactments.

## THE FIRST SCHEDULE.

### ORDER I.

#### 40 PARTIES TO SUITS.

- O. I. r. 1.  
All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or, in the alternative, where, if such 45 persons brought separate suits, any common question of law or fact would arise. Who may be joined as plaintiffs.

- O. I. r. 2.  
Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make 50 such other order as may be expedient. Power of Court to order separate trials.

- O. I. r. 3.  
All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or, in the alternative, where, if separate 55 suits were brought against such persons any common question of law or fact would arise. Who may be joined as defendants.

- O. I. r. 4.  
Judgment may be given without 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 60 entitled to;  
(b) against such one or more of the defendants as may be found to be liable according to their respective liabilities. Court may give judgment for or against one or more of joint parties.

## O. I. r. 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.

## O. I. r. 6.

Joinder of  
parties liable  
on same  
contract.

The plaintiff may at his option join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis, and promissory notes. 5

## O. I. r. 7.

When  
plaintiff in  
doubt from  
whom redress  
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. 10

## O. I. r. 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. 15

(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. 20

## O. I. r. 9.

Misjoinder  
and non-  
joinder.

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. 25

## O. I. r. 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 to do so, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks fit. 30

Court may  
strike out or  
add parties.

(2) The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. 40

(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. 45

Where  
defendant  
added plaintiff  
to be  
amended.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant, and, if the Court thinks fit, on the original defendants. 50

## O. I. r. 11.

Conduct of  
suit.

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

## O. I. r. 12.

Appearance  
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 proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding. 55

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case. 60

## O. I. r. 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 any such objection not so taken shall be deemed to have been waived.

## ORDER II.

## FRAME OF SUIT.

## O. II. r. 1.

Every suit shall so 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.

## O. II. r. 2.

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

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

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

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

*Illustration.*

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905-6-7 is due and unpaid. A sues B in 1908 for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

## O. II. r. 3.

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

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

## O. II. r. 4.

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

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

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

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

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

## O. II. r. 5.

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

## O. II. r. 6.

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

## O. II. r. 7.

All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity after the ground for objection has arisen, and any objection not so taken shall be deemed to have been waived.



## ORDER III.

## RECOGNISED AGENTS AND ADVOCATES.

## O. III. r. 1.

Appearances,  
etc., may be  
in person, by  
recognized  
agent or  
advocate.

Any appearance, application, or act to or in any Court required or authorized by the 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 an advocate 5  
duly appointed to act on his behalf:

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

## O. III. r. 2.

Recognized  
agents.

The recognized agents of parties by whom such appearances, applications, and acts may be made or done are 10

(a) Persons holding power-of-attorney authorizing them to make and do such appearances, applications, and acts on behalf of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearances, application, or act is made or done. 15

(b) Persons carrying on trade or business for and in the names of parties not resident within the local 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 20  
make and do such appearances, applications, and acts.

## O. III. r. 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 party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a 25  
suit shall apply to the service of process on his recognized agent.

## O. III. r. 4.

Appointment  
of advocate.

(1) The appointment of an advocate to make or do any appearance, application, or act for any person shall be in writing and shall be signed by such person or by his recognized agent or by some other person duly authorized by power of attorney to 30  
act in this behalf.

(2) Every such appointment, when accepted by an advocate, shall be filed in the Court, and shall be considered to be in force until determined with the leave of the Court by a writing signed by the client or the advocate, as the case may be, and filed in 35  
Court, or until the client or the advocate dies or until all proceedings in the suit or matter for which the appointment was made are ended as far as regards the client.

## O. III. r. 5.

Service of  
process on  
advocate.

Any process served on the advocate of any party or left at the office or ordinary residence of such advocate, and whether the 40  
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. 45

## O. III. r. 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) Such appointment may be special or general, and shall be made by an instrument in writing signed by the principal, 50  
and such instrument, or, if the appointment is general, a certified copy thereof, shall be filed in Court.

## ORDER IV.

## INSTITUTION OF SUITS.

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

O. IV. r. 1.  
Suit to be commenced by plaint.

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

O. IV. r. 2.

5 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.

Register of suits.

## ORDER V.

10

## ISSUE AND SERVICE OF SUMMONS.

O. V. r. 1.

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

Summons.

15 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

- 20 (a) in person, or  
(b) by a recognized agent, or  
(c) by an advocate duly instructed and able to answer all material questions relating to the suit.

(3) Every such summons shall be signed by the Judge or such officer as he appoints and shall be sealed with the seal of 25 the Court.

O. V. r. 2.

Every summons shall be accompanied by a copy of the plaint or shall, if so permitted, have endorsed upon it a concise statement of the plaintiff's claim.

Copy or statement annexed to summons.

O. V. r. 3.

30 Where the Court sees reason to require the personal appearance of either the plaintiff or the defendant it may make an order for such appearance.

Court may order defendant to appear in person.

O. V. r. 4.

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

- 35 (a) within the local limits of the Court's jurisdiction, or  
(b) without such limits but at a place not more than five days' journey from the Court house.

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

O. V. r. 5.

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

Summons to be either for orders or for final disposal.

O. V. r. 6.

40 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 45 on such day.

Fixing day for appearance of defendant.

O. V. r. 7.

Where the summons is for the final disposal of the suit, it shall direct the defendant to produce on the day fixed for his appearance all documents in his possession or power upon which he intends to rely in support of his case and all witnesses upon 50 whom he intends to call.

Where summons is for final disposal, defendant to be directed to produce evidence.

## O. V. r. 8.

Delivery or  
transmission  
of summons  
for service.

(1) Where the Court has issued a summons to a defendant it may be delivered for service

(a) to such person whose duty it is to serve the processes of the Court, or

(b) to an advocate of the High Court, or

(c) it may be sent by post or messenger to any subordinate Court having jurisdiction in the place where the defendant resides.

(2) A Court to which a summons is sent under clause (1), (c), 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.

## O. V. r. 9.

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.

## O. V. r. 10.

Service on  
several  
defendants.

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

## O. V. r. 11.

Service to be  
on defendant  
in person or  
on his agent.

Whenever 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.

## O. V. r. 12.

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 work for such person within such limits, shall be deemed good service.

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

## O. V. r. 13.

Service on  
agent in  
charge in  
suits for  
immoveable  
property.

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

## O. V. r. 14.

Where service  
may be on  
male member  
of defend-  
ant'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.

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

## O. V. r. 15.

Person served  
to sign  
acknowledg-  
ment.

Where a copy of the summons is duly delivered or tendered to the defendant personally or to an agent or other person on his behalf the defendant or such agent or other person shall be required to endorse an acknowledgment of service on the original summons.

## O. V. r. 16.

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 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.

The serving officer shall, in all cases in which the summons has been served under rule 15, 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.

O. V. r. 17.

Endorsement of time and manner of service.

Where a summons is returned under rule 16, 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 enquiry 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.

O. V. r. 18.

Examination of serving officer.

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

O. V. r. 19.

Substituted service.

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

Effect of substituted service.

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

Time of appearance to be fixed.

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

O. V. r. 20.

Service on defendant in prison.

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

O. V. r. 21.

Service where defendant resides out of Protectorate and has no agent.

(1) Where the defendant is a public officer in civil employ, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

O. V. r. 22.

Service on civil public officer, or on servant of railway or local authority, and on soldiers.

(2) Where the defendant is a soldier or police officer the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

O. V. r. 23.

(1) Where a summons is delivered or sent to any person for service under rule 20 or rule 22 such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

Duty of person to whom summons is delivered or sent for service.

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

## ORDER VI.

## PLEADINGS GENERALLY.

- O. VI. r. 1.  
Pleading. "Pleading" shall mean plaint or written statement of defence.
- O. VI. r. 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 claim or defence, as the case may be, but not 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. 5
- O. VI. r. 3.  
Set off and counterclaim. A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set off or counterclaim sound in damages or not, and such set off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Judge may on the application of the plaintiff before trial, if in the opinion of the Judge such set off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. 15
- O. VI. r. 4.  
Particulars to be given where necessary. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary, such particulars with dates shall be stated in the pleading. 20
- O. VI. r. 5.  
Further and better statement or particulars. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered upon such terms as to costs and otherwise as may be just. 25
- O. VI. r. 6.  
Specific denial. Every allegation of fact in any pleading, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition. 30
- O. VI. r. 7.  
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. 35
- O. VI. r. 8.  
New fact must be specially pleaded. The defendant or plaintiff as the case may be must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, limitation act, release, payment, performance, or facts showing illegality either by statute or common law. 40 45
- O. VI. r. 9.  
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. 50
- O. VI. r. 10.  
Denial to be specific. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages. 55
- O. VI. r. 11.  
Joinder of issue. Subject to the last preceding rule the plaintiff by his reply may join issue upon the defence and each party in his pleading if any subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted. 60

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

O. VI. r. 12.  
Evasive denial.

10 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.

O. VI. r. 13.  
Effect of document to be stated.

15 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.

O. VI. r. 14.  
Malice, knowledge, &c.

20 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.

O. VI. r. 15.  
Notice.

25 Whenever any contract or any relation between any parties 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.

O. VI. r. 16.  
Implied contract or relation.

35 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 bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim.

O. VI. r. 17.  
Presumptions of law.

40 A Judge may at any stage of the proceedings order to be struck out or amended any matter in any endorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between advocate and client.

O. VI. r. 18.  
Striking out pleadings.

45 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.

O. VI. r. 19.  
Amendment of pleadings

50 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.

O. VI. r. 20.  
Failure to amend after order.

60 Every pleading shall be signed by the party and his advocate 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.

O. VI. r. 21.  
Pleading to be signed.

O. VI. r. 22.  
Verification  
of pleading

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. 5

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

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed. 10

O. VI. r. 23.

Trial without  
pleadings in  
Subordinate  
courts.

Suits in a Subordinate court may be instituted by lodging a statement of claim in such form as may be prescribed and may be tried without pleadings unless the Judge otherwise orders. 15

O. VI. r. 24.

Issues to be  
framed.

In a suit tried without pleadings issues shall be framed in accordance with order XIII.

## ORDER VII.

### PLAINT.

O. VII. r. 1.

Particulars to  
be contained  
in plaint.

(1) The plaint or statement of claim shall contain the following particulars:— 20

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

(b) the name, description, nationality, tribe or caste, and place of residence of the plaintiff;

(c) the name, description, nationality, tribe or caste, and place of residence of the defendant, so far as they can be ascertained; 25

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

(e) the facts constituting the cause of action and when and where it arose; 30

(f) the relief which the plaintiff claims;

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

(h) a statement of the value of the subject matter of the suit; and 35

(i) where there has been previous litigation between the parties relating to the same subject a statement to that effect.

May be put  
in writing  
by officer  
deputed  
by Court.

(2) All or any of the above particulars may at the request of a poor, ignorant, or illiterate plaintiff be put in writing at his request by such officer as the Court may depute for the purpose. 40

O. VII. r. 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. 45

O. VII. r. 3.

Where the  
subject  
matter  
of the suit is  
immoveable  
property.

Where the subject matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in all cases in the High Court, shall be accompanied by a sufficient plan of such property. 50

O. VII. r. 4.

When  
plaintiff sues  
as representa-  
tive.

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. 55

O. VII. r. 5.

Defendant's  
interest 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.

Where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the grounds upon which exemption from such law is claimed.

O. V II. r. 6.  
Grounds of exemption from limitation.

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

O. VII. r. 7.  
Relief to be specifically stated.

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.

O. VII. r. 8.  
Relief founded on separate grounds.

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

O. VII. r. 9.  
Procedure on admitting plaint.

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

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

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

O. VII. r. 10.  
Return of plaint.

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

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

O. VII. r. 11.  
Rejection of plaint.

The plaint shall be rejected in the following cases:—

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so;
- (c) Where the relief claimed is properly valued but an insufficient fee has been paid, and the plaintiff on being required by the Court to pay the requisite fee 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.

O. VII. r. 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.

O. VII. r. 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.



## O.VII. r. 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) 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. 5

(3) Where any such document is not in his possession or power he shall, if possible, state in whose possession or power it is. 10

## O.VII. r. 15

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. 15

## O.VII. r. 16

Production of  
shop book.

(1) Save in so far as is otherwise provided by any law relating to the production in evidence of bankers' books, 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. 20 25

Original entry  
to be marked  
and returned

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed. 30

## O.VII. r. 17

Inadmissibil-  
ity of docu-  
ment not pro-  
duced when  
plaint filed.

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. 35

## ORDER VIII.

## DEFENCE AND COUNTERCLAIM.

## O.VIII. r. 1

Written  
statement.

The defendant may, and if so required by the Court shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. 40

## O.VIII. r. 2

Pleading to  
damage.

No denial or defence shall be necessary as to damages claimed or their amount: but they shall be deemed to be put in issue in all cases, unless expressly admitted.

## O.VIII. r. 3

Persons in  
represent-  
ative  
capacity.

If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity or the alleged constitution of any partnership firm, he shall deny the same specifically. 45

## O.VIII. r. 4

Proper  
admission not  
made.

Where the Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, he may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. 50

Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence state specifically that he does so by way of counterclaim.

O.VIII. r. 5.

Set-off and  
and counter-  
claim.

O.VIII. r. 6.

Where a defendant by his defence sets up any counterclaim 5 which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a plaint, setting forth the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, 10 and shall deliver his statement of defence for service on such of them as are parties to the action together with his statement of defence for service on the plaintiff.

Title of  
counterclaim.

O.VIII. r. 7.

Claim against  
person not  
party.

Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear 15 by being served with a copy of the defence, which shall be served in accordance with the rules for regulating service of summons.

O.VIII. r. 8.

Appearance by  
added parties.

Any person not a defendant to the action who is served with a defence and counterclaim as aforesaid must appear thereto as if he had been served with a summons to appear in an action.

O.VIII. r. 9.

Reply to  
counterclaim.

Any person named in a defence as a party to a counterclaim 20 thereby made may deliver a reply within such time as the Court may allow.

O.VIII. r. 10.

Exclusion of  
counterclaim.

Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to such 25 counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may at any time before reply, apply to the Judge for an order that such counterclaim may be excluded, and the Judge may, on the hearing of such application, make such order as shall 30 be just.

O.VIII. r. 11.

Discontinu-  
ance.

If, in any case in which the defendant sets up a counterclaim the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.

O.VIII. r. 12.

Judgment for  
balance.

Where in any action a set-off or counterclaim is established 35 as a defence against the plaintiff's claim, the Judge may if the defence is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

O.VIII. r. 13.

Plea of  
possession.

No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned 40 it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaint.

He may nevertheless rely upon any ground of defence which 50 he can prove except as hereinbefore mentioned.

O.VIII. r. 14.

Particulars of  
set off to be  
given in  
written  
statement.

Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, 55 and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at 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 60 plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect of both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any advocate in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant 65 apply to a written statement in answer to a claim of set-off.

*Illustrations.*

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character 5 with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase money by C against B, the 10 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 15 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. 20

(e) A sues B for compensation on account of trespass. B hold a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands. 25

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

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

(h) A owes the partnership firm of B and C Rs. 1,000. B 30 dies leaving C surviving. A sues C for a debt of Rs. 1,500 due to him in his separate character. C may set off the debt of Rs. 1,000.

**O.VIII. r.15**

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 35 shall be stated, as far as may be, separately and distinctly.

**O.VIII. r.16**

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. 40

**O.VIII. r.17**

Subsequent  
pleadings.

No pleading subsequent to the written statement of a defendant other than by way of defence to a counterclaim or 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 from any of the parties and fix a 45 time presenting the same.

**O.VIII. r.18**

Procedure  
when party  
fails to  
present  
written state-  
ment called  
for by Court.

Where any party from whom a written statement is so required fails to presents the same within the time fixed by the Court the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit. 50

## ORDER IX.

## APPEARANCE OF PARTIES.

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 advocates or recognized agents and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

O. IX. r. 1.

Parties to appear on day fixed in summons.

Where on the day 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 charges if any for such service, the Court may make an order that the suit be dismissed:

10 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.

O. IX. r. 2.

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

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

O. IX. r. 3.

Where neither party appears. suit to be dismissed.

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 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.

O. IX. r. 4.

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

(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 one year from the date of the return made to the Court by the serving officer, to apply for the issue of a fresh summons, and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

O. IX. r. 5.

Dismissal of suit where summons unserved and plaintiff fails for a year to apply for fresh summons.

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

Where the plaintiff appears and the defendant does not appear, when the suit is called on for hearing, then

O. IX. r. 6.

Procedure when only plaintiff appears.

(a) if the Court is satisfied that the summons was duly served it may proceed *ex parte*;

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

(c) if the Court is satisfied 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, or that the defendant was owing to sickness unable to appear in person or cause appearance to be made on his behalf, it 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.

O. IX. r. 7.

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

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.

## O. IX. r. 8.

Procedure  
when defen-  
dant 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 is 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. 5

## O. IX. r. 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 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. 15

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

## O. IX. r.10

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

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. 20

## O. IX. r.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. 25

## O. IX. r.12

Consequence  
of non-atten-  
dance, with-  
out 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 subjected to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear. 30

## O. IX. r.13

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

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: 35 40

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. 45

## O. IX. r.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.

## DISCOVERY AND INSPECTION.

## O. X. r. 1.

Discovery by  
interroga-  
tories.

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: 50 55

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness. 60

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.

O.X. r.2

Particular  
interrogatories to be  
submitted.

10 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 enquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

O.X. r.3

Costs of  
interrogatories.

20 Where any party to a suit is a corporation or a body of persons, empowered by the 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.

O.X. r.4

Corporations.

25 Any objection to answering any interrogatories 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.

O.X. r.5

Objections to  
interrogatories by  
answer.

30 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 the purpose may be made within seven days after service of the interrogatories.

O.X. r.6

Setting aside  
and striking  
out interro-  
gatories.

35 Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

O.X. r.7

Affidavit in  
answer, filing

40 Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for 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.

O.X. r.8

Order to  
answer or  
answer  
further.

45 Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents, which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit; or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

O.X. r.9

Application  
for discovery  
of documents

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.

55 The affidavit to be made by a party against whom such order as is mentioned in rule 9 has been made shall specify which if any of the documents therein mentioned he objects to produce.

O.X. r.10

Affidavit of  
documents.

60 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 suits, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

O.X. r.11

Production  
of documents

## O.X. r.12

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 advocate, and to permit him or them to take copies thereof; and any party 5 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 10 for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

## O.X. r.13

Time for inspection when notice 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 15 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 advocate, 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, 20 at their usual place of custody, and stating which if any of the documents he objects to produce, and on what ground.

## O.X. r.14

Order for inspection.

(1) Where the party served with notice under rule 12 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 25 advocate, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for 30 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 35 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 40 fairly of the suit or for saving costs.

## O.X. r.15

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 45 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 50 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, 55 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 60 not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time 65 had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

## O.X. r.16

Premature discovery.

Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the 70 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.

O.X. r.17

Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Non-compliance with order for discovery.

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:

O.X. r.18

Using answers to interrogatories at trial.

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.

O.X. r.19

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 XI.

## ADMISSIONS.

1. Any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

O.XI. r.1.

Notice of admission of case.

2. Either party may call on 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.

O.XI. r.2

Notice to admit documents.

3. 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:

O.XI. r.3

Notice to admit facts.

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.

O.XI. r.4

Judgment on admissions.

4. Any party may at any stage of a suit, where admission of facts has 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.

O.XI. r.5

Costs.

5. 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 XII.

## PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

## O. XII. r. 1.

Endorsements on documents admitted in evidence.

1. (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,—

- (a) the number and title of the suit,
- (b) the name of the person producing the document, 5
- (c) the date on which it was produced;

and the endorsement shall be signed or initialled by the Judge or by an officer of the Court under his direction.

(2) Where a document so admitted is an entry in a book, account, or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy, and the endorsement thereon shall be signed or initialled by the Judge or by an officer of the Court under his direction. 10

## O. XII. r. 2

Endorsements on copies of admitted entries in books, accounts, and records.

2. (1) Save in so far as is otherwise provided by any law relating to the production in evidence of bankers' books, 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. 15 20

(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 25

(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. 30

(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 16 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: 35

Provided that the Court may except, in the case of a copy of a public record, a certificate of correctness from the public officer in whose charge the record is.

## O. XII. r. 3

Recording of admitted and return of rejected documents.

3. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 2, shall form part of the record of the suit. 40

(2) Documents not admitted in evidence shall not form part of the record, and shall be returned to the persons respectively producing them after they have been endorsed by the Judge or officer of the Court with the particulars mentioned in clauses (a), (b), and (c) of rule 1, sub-rule (1), together with a statement of their having been rejected. 45

## O. XII. r. 4

Court may order any document to be impounded.

4. Notwithstanding anything contained in rule 2 or rule 3 of this Order, or in rule 16 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. 50

## O. XII. r. 5

Return of admitted documents.

5. (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 4, be entitled to receive back the same 55

(a) when the suit has been disposed of, and, if the suit is one in which an appeal is allowed, where the time for preferring an appeal has elapsed and no appeal has been filed, and 60

(b) if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence a receipt shall be given by the person receiving it.

- 10 6. 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.

O.XII. r.6  
Court may send for records of its own or of other Courts.

- 15 7. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

O.XII. r.7  
Provisions as to documents applied to material objects.

### ORDER XIII.

#### SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON.

- 20 1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

O.XIII. r.1  
Framing of issues.

(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.

- 25 (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: issues of fact, and issues of law.

- 30 (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 or their advocates 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.

- 35 (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, or where issue has been joined upon the pleadings.

O.XIII. r.2

- 40 2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Issues of law and of fact.

- 45 3. The Court may frame the issues from all or any of the following materials:—

O.XIII. r.3  
Materials from which issues may be framed.

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of such parties;

- 50 (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

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

O.XIII. r.4

- 55 4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may subject to any law for the time being in force compel the attendance of any person, or the production of any document by the person in whose possession or power it is, by summons or other process.

Court may examine witnesses or documents before framing issues.

- 65 5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

O.XIII. r.5  
Power to amend and strike out issues.

(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.

O.XIII. r.6  
Questions of fact or law may by agreement be stated in form of issues.

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

(a) a sum of money specified in the agreement, or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

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

7. Where the Court is satisfied, after making such inquiry as it deems proper,

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

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

(c) that the same is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court; and shall, upon the finding or decision of such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

#### ORDER XIV.

##### DISPOSAL OF SUIT AT FIRST HEARING.

O. XIV r. 1.  
Parties not at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or fact, the Court may at once pronounce judgment.

O.XIV. r.2  
One of several defendants not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

O.XIV. r.3  
Failure to produce evidence.

3. Where the summons has been issued for the trial 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 XV.

##### SUMMONING AND ATTENDANCE OF WITNESSES.

O. XV. r. 1.  
Summons to attend to give evidence or produce documents.

1. At any time after the suit is instituted the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

O.XV. r.2  
Expenses of witnesses to be paid into Court on applying for summons.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the persons summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under this rule regard shall be had to such scale for expenses of witnesses as may from time to time be approved by the High Court, but 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. 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; or if the Court so directs the person summoned may be notified that the sum so paid into Court will be paid out to him on his attendance.

O.XV. r.3

Tender of expenses or notification of sum lodged.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid in to 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 discharge the person summoned without requiring him to give evidence.

O.XV. r.4

Procedure where insufficient sum paid in.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may discharge the person summoned without requiring him to give evidence.

O.XV. r.5

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

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

6. Any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

O.XV. r.6

Summons to produce documents.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

O.XV. r.7

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

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order X as to proof of service shall apply in the case of all summonses served under this rule.

O.XV. r.8

Summons, how served.

9. (1) 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.

O.XV. r.9

Time for serving summons.

(2) If, in the opinion of the Court or officer by whom summonses are issued, a party applying for a summons has not allowed sufficient time as aforesaid, the Court or officer may refuse to issue the summons.

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

O.XV. r.10

Procedure where witness fails to comply with summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons, or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides. 5

(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. 15

O.XV. r.11

If witness appears, attachment may be withdrawn.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service; and 20

(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. 25

O.XV. r. 12.

Procedure if witness fails to appear.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold, or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any: 30

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. 35

O.XV. r.13

Mode of attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this order as if the person whose property is so attached were a judgment-debtor. 40

O.XV. r.14

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

14. Subject to the provisions of the Ordinance as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document. 45 50

O.XV. r.15

Duty of persons summoned to give evidence or produce document.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it or cause it to be produced at such time and place. 55

O.XV. r.16

When they may depart.

16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party, and the payment through the Court of all necessary expenses if any, the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing, or until the suit is disposed of, and, in default of his furnishing such security may order him to be detained in the civil prison. 60

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who, having attended in compliance with a summons, departs without lawful excuse in contravention of rule 16. O.XV. r.17  
Application of rules 10 to 13.
18. Where any person arrested under a warrant is brought before the Court in custody, and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given may release him, and in default of his giving such bail or security may order him to be detained in the civil prison. O.XV. r.18  
Procedure where witness apprehended cannot give evidence or produce document.
19. No one shall be ordered to attend in person to give evidence unless he resides
- (a) within the local limits of the Court's jurisdiction, or
- (b) without such limits but at a place not more than five days' journey from the Court house. O.XV. r.19  
No witness to be ordered to appear in person unless resident within certain limits.
20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit. O.XV. r.20  
Consequence of refusal of a party to give evidence when called on by the Court.
21. Where any party to a suit is required to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable. O.XV. r.21  
Rules as to witnesses to apply to parties summoned.
- ORDER XVI.
- ADJOURNMENTS.
1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the suit. O. XVI. r. 1.  
Court may grant time and adjourn hearing.
- (2) In every such case the Court shall fix a day for the further hearing of the suit, or may adjourn the hearing generally, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment: Costs of adjournment.
- Provided that, when the hearing of evidence has once begun the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court find the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded:
- Provided also that, where the hearing of the suit has been adjourned generally, either party may have liberty to apply to the Court to restore the case to the list.
2. Where the hearing of a suit has been adjourned generally the Court may, if no application aforesaid is made within twelve months of the last adjournment, dismiss the suit. O.XVI. r.2  
Procedure where no application is made to restore suit adjourned generally.
3. 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. O.XVI. r.3  
Procedure if parties fail to appear on day fixed.
4. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith. O.XVI. r.4  
Court may proceed notwithstanding either party fails to produce evidence.

## ORDER XVII.

## HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

## O. XVII. r. 1.

Right to  
begin.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to 5  
begin.

## O. XVII. r.2

Statement  
and produc-  
tion of  
evidence.

2. (1) On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. 10

(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. 15

## O. XVII. r.3

Evidence  
where  
several  
issues.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence 20  
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.

## O. XVII. r.4

Witnesses to  
be examined  
in open  
Court.

4. The evidence of the witnesses in attendance shall be 25  
taken orally in open Court in the presence and under the personal direction and superintendence of the Judge. Provided that the Judge may direct that the public be excluded from the Court during the taking of any evidence which in his opinion it is desirable should be taken in camera. 30

## O. XVII. r.5

How evi-  
dence to be  
recorded.

5. The evidence of each witness shall be taken down in writing 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 com- 35  
pleted shall be signed by the Judge.

## O. XVII. r.6

When deposi-  
tion to be  
interpreted  
and read  
over.

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not under- stand the language in which it is taken down, the evidence as taken down in writing shall when completed be interpreted to him in the language in which it was given, and the Judge shall, if 40  
necessary, correct the same, and shall sign it.

Provided that in any case in which advocates are engaged on both sides the application of this rule may be waived by consent.

## O. XVII. r.7

Questions  
objected to.

7. Where any question put to a witness is objected to by a 45  
party or his advocate, and the Court allows the same to be put or upholds the objection, the Court shall at the request of either party or his advocate, and the Court allows the same to be put allowing the question or upholding the objection.

## O. XVII. r.8

Remarks on  
demeanour  
of witness.

8. The Court may record such remarks as it thinks material 50  
respecting the demeanour of any witness while under examination.

## O. XVII. r.9

Power to  
deal with  
evidence  
taken before  
another  
Judge.

9. (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 taken down under the foregoing rules as if such evidence had been taken down by him or under his 55  
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 18. 60

10. (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.

O.XVII. r.10

Power to examine witness immediately.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

10 (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.

O.XVII. r.11

15 11. The Court may at any stage of the 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.

Court may recall and examine witness.

O.XVII. r.12

12. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

Power of Court to inspect.

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## ORDER XVIII.

## AFFIDAVITS.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

O.XVIII. r.1.

Power to order any point to be proved by affidavit.

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.

30 2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

O.XVIII. r.2

Power to order attendance of deponent for cross-examination.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

O.XVIII. r.3

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

Matters to which affidavits shall be confined.

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## ORDER XIX.

## JUDGMENT AND DECREE.

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

O. XIX. r. 1. Judgment when pronounced.

45 2. (1) A Judge may pronounce a judgment written and signed but not pronounced by his predecessor.

O.XIX. r.2

Power to pronounce judgment written by another Judge.

(2) A Judge of the High Court may pronounce a judgment written and signed but not pronounced by another Judge of the High Court.

O.XIX. r.3

50 3. (1) A judgment pronounced by the Judge who wrote it shall be dated and signed by him in open Court at the time of pronouncing it.

Judgment to be signed.

(2) A judgment pronounced by a Judge other than the Judge by whom it was written shall be dated and countersigned by him in open Court at the time of pronouncing it.

55 (3) A judgment once signed shall not afterwards be altered or added to save as provided by section 93 or on review.

4. Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

O.XIX. r.4 Contents of judgment.

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## O.XIX. r.5

Court to  
state its  
decision on  
each issue.

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

## O.XIX. r.6

Contents of  
decree.

6. (1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. 5

(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. 10

(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.

## O.XIX. r.7

Date of  
decree.

7. The decree shall bear the date 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. 15

## O.XIX. r.8

Procedure  
where Judge  
has vacated  
office or is  
unable to  
sign decree.

8. (1) 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. 20

(2) Where a Judge of the High Court is unable from any cause to sign a decree drawn up in accordance with a judgment of his which has been pronounced, such decree may be signed by any other Judge of the High Court. 25

## O.XIX. r.9

Decree for  
recovery of  
immoveable  
property.

9. Where the subject matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and, where such property can be identified by boundaries or by numbers in a government record or survey, the decree shall specify such boundaries or numbers. 30

## O.XIX. r.10

Decree for  
delivery of  
moveable  
property.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

## O.XIX. r.11

Decree may  
direct pay-  
ment by  
instalments.

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable. 35 40

(2) After the passing of any decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit. 45

## O.XIX. r.12

Decree for  
possession  
and mesne  
profits.

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree:— 50

(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 55

(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. 60

(2) Where an inquiry is directed under clause (b) or clause (c) a final decree in respect of the rent and mesne profits shall be passed in accordance with the result of such inquiry.

O.XIX. r.13

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

Decree in administration suit.

(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 proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being 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 Ordinance.

O.XIX. r.14

14. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for dissolution of partnership.

O.XIX. r.15

15. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Decree in suit for account between principal and agent.

O.XIX. r.16

16. 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 matter therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Special directions as to accounts.

O.XIX. r.17

17. Where a Court passes a decree for the partition of property, or for the separate possession of a share therein, the Court may, if the partition or separation cannot be conveniently made without further enquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Decree in suit for partition of property or separate possession of a share therein.

O.XIX. r.18

18. (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.

Decree when set-off is allowed.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under Order VIII rule 14 or otherwise.

O.XIX. r.19

19. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

Certified copies of judgment and decree to be furnished.

## ORDER XX.

## EXECUTION OF DECREES AND ORDERS.

O.XX. r. 1.

Modes of  
paying  
money under  
decree.

1. (1) All money payable under a decree shall be paid as follows, namely:—

(a) into the Court whose duty it is to execute the decree;  
or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

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(2) Where any payment is made under clause (a) of sub-rule (1) notice of such payment shall be given to the decree-holder.

O.XX. r. 2

Payment out  
of Court to  
decree-  
holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole 10 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 15 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 20 be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

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O.XX. r. 3

Procedure  
where Court  
desires that  
its own  
decree shall  
be executed  
by another  
Court.

3. The Court sending a decree for examination 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 30 executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

O.XX. r. 4

Court receiv-  
ing copies  
of decree to  
file same  
without  
proof.

4. The Court to which a decree is so sent shall cause such 35 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.

O.XX. r. 5

Execution or  
transfer by  
High Court  
of transfer-  
red decree.

5. Where the Court to which the decree is sent for execution 40 is the High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction, or it may be transferred by such Court for execution to any subordinate Court of competent jurisdiction.

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O.XX. r. 6

Application  
for execu-  
tion.

6. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree, 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.

O.XX. r. 7

Oral appli-  
cation.

7. (1) Where a decree is for the payment of money the Court 50 may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant, if he is within the precincts of the Court.

Written  
application.

(2) Save as otherwise provided by sub-rule (1), every appli- 55 cation for the execution of a decree shall be in writing, signed and verified by the applicant or his advocate 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:—

60

(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;

5 (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  
10 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  
15 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;

20 (iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

8. Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his  
25 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.

O.XX. r.8  
Application  
for attach-  
ment of  
moveable  
property not  
in judgment-  
debtor's  
possession.

9. Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall  
30 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 government records or surveys a specification of such boundaries or numbers; and

35 (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.

O.XX. r.9  
Application  
for attach-  
ment of  
immoveable  
property to  
contain  
certain  
particulars.

10. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may,  
40 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.

O.XX. r.10  
Application  
for execution  
by joint  
decree-holder

45 (2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

11. 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  
50 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:

O.XX. r.11  
Application  
for execution  
by transferee  
of decree.

55 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:

60 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.

## O.XX. r.12

Procedure  
on receiving  
an applica-  
tion for  
execution of  
decree.

12. (1) On receiving an application for the execution of a decree as provided by rule 7 sub-rule (2) the Court shall ascertain whether such of the requirements of rules 7 to 9 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. 5

(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. 10

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application. 15

Provided that in the case of a decree for the payment of money the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

## O.XX. r.13

Execution in  
case of cross  
decrees.

13. (1) Where applications are made to a Court for the execution of cross decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then 20

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and 25

(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 on the decree for the smaller sum. 30

(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 assignee himself.

(3) This rule shall not be deemed to apply unless 35

(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 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. 40

### *Illustrations.*

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross decree under this rule. 45

(b) A and B co-plaintiffs obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross decree under this rule. 50

(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. 55

(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. 60

O.XX. r.14

14. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,

Execution in case of cross-claims under same decree.

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and,

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction of the smaller sum shall be entered upon the decree.

O.XX. r.15

15. The provisions contained in rules 13 and 14 shall apply to decrees for sale in enforcement of a mortgage or charge.

Cross-decrees and cross-claims in mortgage suits.

O.XX. r.16

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

Simultaneous execution.

O.XX. r. 17

17. (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, 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:

Notice to show cause against execution in certain cases.

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

O.XX. r.18

18. (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.

Procedure after issue of notice.

(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.

O.XX. r.19

19. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

Process for execution.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

O.XX. r.20

20. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

Endorsement on process.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court may examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

## O.XX. r.21

When Court  
may stay  
execution.

21. (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 the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution has been issued thereby, or if application for execution had been made thereto. 10

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the results of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit. 15

## O.XX. r.22

Liability of  
judgment-  
debtor dis-  
charged.

22. No order of restitution or discharge under rule 21 shall prevent the property or person of a judgment-debtor from being re-taken in execution of the decree sent for execution. 20

## O.XX. r.23

Order of  
Court which  
passed decree  
or of appel-  
late Court  
to be bind-  
ing upon  
Court applied  
to.

23. 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. 25

## O.XX. r.24

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

24. Where a suit is pending in any Court against the holder of a decree of such Court on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided. 30

## O.XX. r.25

Decree for  
payment of  
money.

25. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor or by the attachment and sale of his property, or by both. 35

## O.XX. r.26

Decree for  
specific move-  
able property

26. (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both. 40

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application. 50

(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 date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease. 55

## O.XX. r.27

Decree for  
specific per-  
formance, for  
restitution of  
conjugal  
rights, or  
for an in-  
junction.

27. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree, and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both. 60

(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 5 in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have 10 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 15 paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract 20 or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder, or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done 25 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.

28. (1) Notwithstanding anything in rule 27, the Court, either at the time of passing a decree for the restitution of 30 conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.

(2) Where the Court has made an order under sub-rule (1), and the decree holder is the wife, it may order that, in the event of the decree not being obeyed within such period as may be 35 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 40 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 45 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.

29. (1) Where a decree is for the execution of a document 50 or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served 55 on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in his behalf.

(3) Where the judgment-debtor objects to the draft, his 60 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 65 directed, 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:—

70 “C.D. Judge of the Court of 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.

O.XX. r.28

Discretion of Court in executing decrees for restitution of conjugal rights.

O.XX. r.29

Decree for execution of document or endorsement of negotiable instrument.



(6) The Court or such officer as it may appoint in this behalf shall cause the document to be registered, if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration. 5

**O.XX. r.30**

**Decree for  
immoveable  
property.**

30. Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property. 10

(2) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum or other customary mode, at some convenient place, the substance of the decree. 15

(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 her community 20 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.

**O.XX. r.31**

**Decree for  
delivery of  
immoveable  
property  
when in  
occupancy of  
tenant.**

31. Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to 25 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 notifying the occupant in such manner as may be suitable the substance of the decree in regard to the property. 30

**O.XX. r.32**

**Discretion-  
ary power to  
permit judg-  
ment-debtor  
to show cause  
against  
detention  
in prison.**

32. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his 35 arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant 40 for the arrest of the judgment-debtor.

**O.XX. r.33.**

**Warrant for  
arrest to  
direct judg-  
ment-debtor  
to be  
brought up.**

33. 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 45 the costs (if any) to which he is liable, be sooner paid.

**O.XX. r.34.**

**Subsistence  
allowance.**

34. (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as may be sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before 50 the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 42, or, where no such scales have been 55 fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments to the officer of the Court 60 appointed in this behalf in advance before the first day of each month.

(4) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit; 65

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

35. (1) Where a judgment-debtor appears before the Court in obedience to a notice issued under rule 32, or is brought before the Court after being arrested in execution of a decree for the payment of money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree, or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms as it thinks fit, make an order disallowing the application for his arrest and detention or directing his release as the case may be.

O.XX r.35.  
Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

(2) Before making an order under sub-rule (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely:—

- (a) The decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account;
- (b) the transfer, concealment, or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree;
- (c) any undue preference given by the judgment-debtor to any of his other creditors;
- (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it;
- (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the Court does not make an order under sub-rule (1), it shall cause the judgment-debtor to be arrested, if he has not already been arrested, and, subject to the provisions of this Ordinance, commit him to the civil prison.

36. 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.

O.XX r.36.  
Examination of judgment-debtor as to his property.

37. 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.

O.XX r.37.  
Attachment in case of decree for rent, or mesne profits, or other matter, amount of which to be subsequently determined.

38. Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody, or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

O.XX r.38.  
Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

O.XX r. 39.  
Attachment  
of agricul-  
tural pro-  
duce.

39. Where the property to be attached is agricultural produce, 5  
the attachment shall be made by affixing a copy of the warrant  
of attachment

(a) where such produce is a growing crop, on the land on  
which such crop has grown, or

(b) where such produce has been cut or gathered, on the 10  
barn, stack, or place 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 15  
or personally works for gain or in which he is known to have  
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.

O.XX r. 40<sup>a</sup>  
Provisions  
as to agri-  
cultural pro-  
duce under  
attachment.

40. (1) Where agricultural produce is attached, the Court 20  
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. 25

(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 30  
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, 35  
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. 40

(4) Where an order for the attachment of a growing crop has  
been made at a considerable time before the crop is likely to be  
fit to be cut or gathered, the Court may suspend the execution  
of the order for such time as it thinks fit, and may, in its discre-  
tion, make a further order prohibiting the removal of the crop 45  
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. 50

O.XX r. 41.  
Attachment  
of debt,  
share, and  
other pro-  
perty not in  
possession  
of judgment-  
debtor.

41. (1) In the case of  
(a) a debt not secured by a negotiable instrument,  
(b) a share in the capital of a corporation,  
(c) other moveable property not in the possession of the  
judgment-debtor, except property deposited in, or in the custody 55  
of, any Court, the attachment shall be made by a written order  
prohibiting

(i) in the case of the debt, the creditor from recovering  
the debt, and the debtor from making payment thereof, until  
the further order of the Court; 60

(ii) in the case of the share, the person in whose name  
the share may be standing from transferring the same or  
receiving any dividend thereon;

(iii) in the case of the other moveable property except as  
aforesaid, the person in possession of the same from giving 65  
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 70  
moveable property (except as aforesaid), to the person in posses-  
sion 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.

O.XX r. 42.

- 5 42. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of share in moveables.

O.XX r. 43.

- 10 43. (1) Where the property to be attached is the salary or allowance of a public officer, or of a servant of a railway company, or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to  
15 the provisions of section 45, be withheld from such salary or allowance either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to the person whose duty it is to disburse such salary or allowances such person shall withhold and remit to the Court the amount due  
20 under the order, or the monthly instalments, as the case may be.

Attachment of salary or allowances of public officer or servant of railway company or local authority.

- (2) Where the attachable proportion of such salary or allowance is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment the person whose duty it is to disburse such salary or allowances shall  
25 forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

- (3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the  
30 railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Ordinance extends, and while he is beyond those limits if he is in receipt of any salary or allowances payable out of the Protectorate revenues or the funds of a railway company carrying on business  
35 in any part of the Protectorate or local authority in the Protectorate; and the Government of the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

O.XX r. 44.

- 40 44. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

Attachment of partnership property.

- 45 (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  
50 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 enquiries 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  
55 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.

- 60 (4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within the Protectorate.

- (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  
65 as do not join in the application and as are within the Protectorate.

(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.

O.XX r. 45.

Execution of  
decree  
against firm.

45. (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 XXVIII 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 the summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of sections 247 of the Indian Contract Act 1872, or any law substituted therefor.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and, where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable, or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

O.XX r. 46.

Attachment  
of negoti-  
able instru-  
ment.

46. 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.

O.XX r. 47.

Attachment  
of property  
in custody  
of Court or  
public  
officer.

47. 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, or otherwise, shall be determined by such Court.

O.XX r. 48.

Attachment  
of decree.

48. (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 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 to the Court executing the decree such information and aid as may 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.

O.XX r. 49.

49. (1) Where the property is immoveable the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

Attachment of immoveable property.

(2) The order shall be proclaimed at such place on or adjacent to such property and in such manner as the Court may direct, and a copy of the order shall be affixed on a conspicuous part of the property and upon a conspicuous part of the Court House.

## 5. Where

O.XX r. 50.

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

Removal of attachment after satisfaction of decree.

(b) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

O.XX r. 51.

51. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Order for payment of coin or currency notes to party entitled under decree.

O.XX r. 52.

52. Where any property has been attached in execution of a decree, but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Determination of attachment.

O.XX r. 53.

53. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

O.XX r. 54.

54. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

O.XX r. 55.  
Release of  
property  
from attach-  
ment.

55. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor, or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment. 5

O.XX r. 56.  
Disallow-  
ance of  
claim to  
property  
attached.

56. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim. 15

O.XX r. 57.  
Continu-  
ance of  
attachment  
subject to  
claim of  
incumbran-  
cer.

57. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge. 20

O.XX r. 58.  
Saving of  
suits to  
establish  
right to  
attached  
property.

58. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive. 25

O.XX r. 59.  
Power to  
order pro-  
perty attach-  
ed to be sold  
and proceeds  
to be paid  
to person  
entitled.

59. 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. 30

O.XX r. 60.  
Sales by  
whom  
conducted  
and how  
made.

60. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed. 35

O.XX r. 61.  
Notification  
of sales by  
public  
auction.

61. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause public notice and advertisement of the intended sale to be given in such manner as the Court may direct.

(2) Such public notice 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 40

- (a) the property to be sold;
- (b) any incumbrance to which the property is liable;
- (c) the amount for the recovery of which the sale is ordered; 45

and

(d) 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 public notice. 50

(4) For the purpose of ascertaining the matters to be specified in the public notice, 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. 55

(5) The costs of advertising a sale shall be deemed to be costs of the sale. 60

62. Save in the case of property liable to speedy or natural decay, no sale hereunder shall without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the public notice has been affixed on the Court House of the Judge ordering the sale.

O.XX r. 62.

Time of sale.

63. (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:

O.XX r. 6.

Adjournment or stoppage of sale.

Provided that where the sale is made in, or within the precincts of, the Court-house no such adjournment shall be made without leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, fresh public notice shall be given, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

O.XX r. 64.

64. 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 by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

Defaulting purchaser answerable for loss on re-sale.

65. (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.

O.XX r. 65.

Decree-holder not to bid for or buy property without permission.

(2) Where a decree-holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of section 51, 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.

O.XX r. 66.

66. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in the property sold.

Restriction on bidding or purchase by officers.

67. 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 by public auction, authorize the sale of such instrument or share through a broker.

O.XX r. 67.

Negotiable instruments and shares in corporations.

68. (1) Where moveable property is sold by public auction, the price of each lot shall be paid at the time of sale, or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be sold.

O.XX r. 68.

Sale by public auction.

(2) On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.



## O.XX r. 69.

Irregularity  
not to vitiate  
sale, but any  
person injured  
may sue.

69. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery. 5

## O.XX r. 70.

Delivery of  
moveable pro-  
perty, debts  
and shares.

70. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser. 15 20 25

## O.XX r. 71.

Transfer of  
negotiable instru-  
ments and  
shares.

71. (1) Where the execution of a document or the endorsement of a 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. 30

(2) Such execution or endorsement may be in the following form, namely:— 35

A.B. by C.D. Judge of the Court of in a suit  
by E.F. against A.B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself. 40

## O.XX r. 72.

Vesting order  
in case of  
other property.

72. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser, or as he may direct; and such property shall vest accordingly. 45

## O.XX r. 73.

Sale of im-  
moveable pro-  
perty.

73. Sales of immoveable property in execution of decrees may be ordered by any Court.

## O.XX r. 74.

Postponement  
of sale to  
enable judg-  
ment-debtor  
to raise amount  
of decree.

74. (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper to enable him to raise the amount. 50 55

(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 48, 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 65, into Court: 65

Provided also that no mortgage, lease, or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

O.XX r. 75.

75. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and, in default of such deposit, the property shall forthwith be re-sold.

Deposit by purchaser and re-sale on default.

(2) Where the decree-holder is the purchaser, and is entitled to set off the purchase-money under rule 65, the Court may dispense with the requirements of this rule.

O.XX r. 76.

76. The full amount of purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Time for payment in full of purchase money.

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 65.

O.XX r. 77.

77. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

78. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh public notification in the manner and for the period hereinbefore prescribed for the sale.

O.XX r. 78.

Notification on re-sale.

79. Where the property sold is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

O.XX r. 79.

Bid of co-sharer to have preference.

80. (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,

O.XX r. 80.

Application to set aside sale on deposit.

(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 public notification of sale as that for the recovery of which the sale was ordered, less any amount which may since the date of such public notification of sale have been received by the decree-holder.

(2) Where a person applies under rule 81 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the public notification of sale.

O.XX r. 81.

Application to set aside sale on ground of irregularity or fraud.

81. (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

O.XX r. 82.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

82. 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.

## O.XX r. 83.

Sale when  
to become  
absolute or be  
set aside.

83. (1) Where no application is made under rule 80, rule 81, or rule 82, 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, 5  
in the case of an application under rule 80, 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. 10

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

## O.XX r. 84.

Return of  
purchase-  
money in cer-  
tain cases.

84. Where a sale of immoveable property is set aside under rule 83, the purchaser shall be entitled to an order for payment of his purchase-money, with or without interest as the Court may 15  
direct, against any person to whom it has been paid.

## O.XX r. 85.

Certificate to  
purchaser.

85. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on 20  
which the sale became absolute.

## O.XX r. 86.

Delivery of  
property in  
occupancy of  
judgment-  
debtor.

86. Where the immoveable property sold is in the occupancy of the judgment-debtor, or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate 25  
in respect thereof has been granted under rule 85, 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 30  
same.

## O.XX r. 87.

Delivery of  
property in  
occupancy of  
tenant.

87. 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 85, the Court shall, on the application of the purchaser, order delivery to be made by 35  
affixing a copy of the certificate of sale in some conspicuous place on the property and notifying the occupant in such manner as the Court may direct that the interest of the judgment-debtor has been transferred to the purchaser.

## O.XX r. 88.

Resistance or  
obstruction to  
possession of  
immoveable  
property.

88. (1) Where the holder of a decree for the possession of 40  
immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and 45  
shall summon the party against whom the application is made to appear and answer the same.

## O.XX r. 89.

Resistance or  
obstruction  
by judgment-  
debtor.

89. 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 50  
that the applicant be put into possession of the property, and, where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to 60  
thirty days.

## O.XX r. 90.

Resistance or  
obstruction by  
*bona fide*  
claimant.

90. 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 65  
than the judgment-debtor, the Court shall make an order dismissing the application.

## O.XX r. 91.

Dispossession  
by decree-  
holder or  
purchaser.

91. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property, or where such property has 70  
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.

92. 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.

O.XX r. 92.

*Bona fide* claimant to be restored to possession.

93. Nothing in rules 90 and 92 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.

O.XX r. 93.

Rules not applicable to transferee *lite pendente*.

94. Any party not being a judgment-debtor against whom an order is made under rule 89, rule 90, or rule 92, may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be conclusive.

O.XX r. 94.

Order conclusive subject to regular suit.

## ORDER XXI.

### DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

O.XXI r. 1.  
No abatement by party's death if right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

O.XXI r. 2.  
Procedure where one of several plaintiffs or defendants dies and right to sue survives.

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

O.XXI r. 3.  
Procedure in case of death of one of several plaintiffs or of sole plaintiff.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff.

O.XXI r. 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, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

O.XXI r. 5.

Determination of question as to legal representative.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff, or a deceased defendant, such question shall be determined by the Court.

O.XXI r. 6.

No abatement by reason of death after hearing.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

## O.XXI r. 7.

Suit not  
abated by  
marriage of  
female party.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

## O.XXI r. 8.

When plaintiff's  
insolvency  
bars suit.

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the suit, and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

## O.XXI r. 9.

Effect of  
abatement or  
dismissal.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act 1877 shall apply to applications under sub-rule (2).

## O.XXI r. 10.

Procedure in  
case of  
assignment  
before final  
order in  
suit.

10. (1) In other cases of an assignment, creation, or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

## O.XXI r. 11.

Application  
of order to  
appeals.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

## O.XXI r. 12.

Application  
of order to  
proceedings.

12. Nothing in rules 3, 4, and 8 shall apply to proceedings in execution of a decree or order.

## ORDER XXII.

## WITHDRAWAL AND ADJUSTMENT OF SUITS.

## XXII r. 1.

Withdrawal  
of suit or  
abandonment  
of part of  
claim.

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of the suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such 5 subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. In any fresh suit instituted on permission granted under 10 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.

O.XXII r. 2.  
Limitation  
law not  
affected by  
first suit.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff 15 in respect of the whole or any part of the subject-matter of the suit, the Court may, on the application of a party, order such agreement, compromise, or satisfaction to be recorded, and pass a decree in accordance therewith so far as it relates to the suit, or may mark the suit as settled.

O.XXII r. 3.  
Compromise o  
suit.

## 20 ORDER XXIII.

### PAYMENT INTO COURT.

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

O. XXIII r. 1  
Deposit by  
defendant of  
amount in  
satisfaction  
of claim.

2. Notice of the deposit shall be given through the Court 25 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.

O.XXIII r. 2.  
Notice of  
deposit.

3. No interest shall be allowed to the plaintiff on any sum 30 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.

O.XXIII r. 3.  
Interest on  
deposit not  
allowed to  
plaintiff after  
notice.

4. (1) Where the plaintiff accepts such amount as satisfac- 35 tion 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 plaintiffs' claim.

O.XXIII r. 4.  
Procedure  
where plaintiff  
accepts deposit  
as satisfaction.

(2) Where the plaintiff accepts such amount as satisfaction 40 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 45 consider which of the parties is most to blame for the litigation.

## ORDER XXIV.

### SECURITY FOR COSTS.

1. (1) Where at any stage of a suit it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than 50 one) that all the plaintiffs are, residing out of the Protectorate, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within the Protectorate other than the property in suit, the Court may either of its own motion or on the application of any defendant order 55 the plaintiff or plaintiffs within a time fixed by it to give security for the payment of all costs incurred by any defendant.

O. XXIV r. 1  
When secu-  
rity for costs  
may be  
required from  
plaintiff.

(2) Whoever leaves the Protectorate under such circum-  
stances as to afford reasonable probability that he will not be  
forthcoming whenever he may be called upon to pay costs shall 60  
be deemed to be residing out of the Protectorate within the  
meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within the Protectorate.

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## O.XXIV r. 2.

Effect of  
failure to  
furnish  
security.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(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 XXV.

## COMMISSIONS.

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## O.XXV r. 1.

Cases in  
which Court  
may issue  
commission  
to examine  
witnesses.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the limits of its jurisdiction who is exempted under this Ordinance from attending the Court or who is from sickness or infirmity unable to attend it.

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## O.XXV r. 2.

Order for  
commission.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application supported by affidavit or otherwise of any party to the suit or of the witness to be examined.

## O.XXV r.3.

Where witness  
resides within  
Court's juris-  
diction.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit.

## O.XXV r. 4.

Persons for  
whose exami-  
nation commis-  
sion may  
issue.

4. (1) Any Court may in any suit issue a commission for the examination of

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, other than the High Court, within the local limits of whose jurisdiction such person resides, or to any advocate or other person whom the Court issuing the commission may appoint.

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## O.XXV r. 5.

Request to  
examine  
witness abroad.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within the Protectorate is satisfied that the evidence of such person is necessary, the Court may issue a letter of request.

## O.XXV r. 6.

Court to  
examine wit-  
ness pursuant  
to commission.

6. Every Court issuing a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

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## O.XXV r. 7.

Return of  
commission  
with deposition  
of witness.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

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8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered unless

O.XXV r. 8.  
When depositions may be read in evidence.

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service; or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

O.XXV r. 9.  
Commissions to make local investigations.

(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.

O.XXV r. 10.  
Procedure of Commissioner.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the 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.

Report and depositions to be evidence.

(3) Where the Court is for any reason dissatisfied with the proceeding of the Commissioner, it may direct such further enquiry to be made as it shall think fit.

11. In any suit in which an examination or adjustment of accounts is necessary the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

O.XXV r. 11.  
Commissioner to examine or adjust accounts.

(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 enquiry, or also to report his own opinion on the point referred for his examination.

O.XXV r. 12.  
Court to give Commissioner necessary instructions.

(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 enquiry as it shall think fit.

Proceedings and report to be evidence.

13. Where a preliminary decree for partition has been passed, the Court may 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.

O.XXV r. 13.  
Commissioner to make partition of immoveable property.

(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

O.XXV r. 14.  
Procedure of Commissioner.

(2) The Commissioner shall then prepare and sign a report, or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports, appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary, or set aside the same.



(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

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## O.XXV r. 15.

Expenses of commission to be paid into Court.

15. Before issuing any commission under this order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

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## O.XXV r. 16.

Powers of Commissioner.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

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(b) call for and examine documents and other things relevant to the subject of the enquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

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## O.XXV r. 17.

Attendance and examination of witnesses before Commissioner.

17. (1) The provisions of this Ordinance 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, and for the purposes of this rule the Commissioner shall be deemed to be a civil court.

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(2) A Commissioner may apply to any Court other than the High Court within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

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## O.XXV r. 18.

Parties to appear before Commissioner.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or advocates.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

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## ORDER XXVI.

## SUITS BY OR AGAINST MILITARY AND POLICE.

## O. XXVI. r. 1.

Soldiers or police who cannot obtain leave may authorize a person to sue or defend for them.

1. (1) Where any military officer, soldier, or member of the police force actually serving the Government is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

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(2) The authority shall be in writing signed by the person giving it and countersigned by that person's superior officer.

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## O.XXVI r. 2.

Person so authorized may act personally or appoint an advocate.

2. Any person authorized as aforesaid may prosecute or defend the suit in person in the same manner as the person authorizing could do if present; or he may appoint an advocate to prosecute or defend the suit on behalf of the person authorizing him.

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## O.XXVI r. 3.

Service on person so authorized or on his advocate to be good service.

3. Processes served upon any person authorized under rule (1) or upon any advocate appointed as aforesaid shall be as effectual as if they had been served on the party in person.

## ORDER XXVII.

## SUITS BY OR AGAINST CORPORATIONS.

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## O. XXVII. r. 1.

Subscription and verification of pleading.

1. In suit 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. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served

O.XXVII r. 2.

Service on Corporation.

(a) on the secretary, or on any director or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director or other principal officer of the corporation who may be able to answer material questions relating to the suit.

O.XXVII r. 3.

Power to require personal attendance of officer of corporation.

## ORDER XXVIII.

15 SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in the Protectorate may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were; at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

O. XXIII r. 3.

Suing of partners in name of firm.

(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 partners.

O.XXVIII r. 2.

Disclosure of partner's names.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their advocate shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their advocate 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.

O.XXVIII r. 3.

Service.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within the Protectorate upon any person having, at the time of service, the control or management of the partnership business there, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without the Protectorate:

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within the Protectorate whom it is sought to make liable.

O.XXVIII r. 4.

Right of suit on death of partner.

4. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions, and any of such persons dies, whether before the institution or during the pendency of the 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 with 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.

O.XXVIII r. 5.

Notice in  
what capacity  
served.

5. Where a summons is issued to a firm, and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner. 5 10

O.XXVIII r. 6.

Appearance of  
partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm. 15

O.XXVIII r. 7.

No appearance  
except by  
partners.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

O.XXVIII r. 8.

Appearance  
under protest.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared. 20

O.XXVIII r. 9.

Suits between  
co-partners.

9. This Order shall apply to suits between a firm and one or more of the partners therein, and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just. 25 30

O.XXVIII r. 10.

Suit against  
person carrying  
on business  
in name other  
than his own.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply. 35

## ORDER XXIX.

### SUITS BY OR AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

O. XXIX r. 1.

Representation  
of beneficiaries  
in suits concern-  
ing property  
vested in  
trustees.

1. In all suits concerning property vested in a trustee, executor, or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties. 40 45

O.XXIX r. 2.

Joinder of  
trustees, exe-  
cutors, and  
administrators.

2. Where there are several trustees, executors, or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors, and administrators outside the Protectorate, need not be made parties. 50

O.XXIX r. 3.

Husband of  
married exe-  
cutrix not to  
join.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix, or executrix shall not as such be a party to a suit by or against her.

## ORDER XXX.

55.

### SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

O. XXX r. 1

Minor to sue  
by next friend.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend the defendant may apply to have the plaint taken off the file, with costs to be paid by the advocate or other person by whom it was presented.

O.XXX r. 2.

Where suit is instituted without next friend, plaint to be taken off file.

5 (2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person  
10 to be guardian for the suit of such minor.

O.XXX r. 3.

Guardian for the suit to be appointed by Court for minor defendant.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verify-  
15 ing the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the  
20 minor appointment or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objections which may be  
25 urged on behalf of any person served with notice under this sub-rule.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

O.XXX r. 4.

Who may act as next friend or be appointed guardian of the suit.

30 Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

Where a minor has a guardian appointed or declared by competent authority, no person other than that guardian shall act as  
35 the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act, or be appointed as the case may be.

(3) No person shall without his consent be appointed guardian  
40 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  
45 be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the payment or allowance of such costs as justice and the circumstances of the case may require.

50 5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

O.XXX r. 5.

Representation of minor by next friend or guardian for the suit.

(2) Every order made in a suit or on any application before the Court in or by which a minor is in any way concerned or  
55 affected, without such minor being presented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the advocate 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 advocate.

60 6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either

O.XXX r. 6.

Receipt by next friend or guardian for the suit of property under decree for minor.

- (a) by way of compromise before decree or order, or
- (b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application. 5

**O.XXX r. 7.**

Agreement or compromise by next friend or guardian for the suit.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian. 10

(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. 15

**O.XXX r. 8.**

Retirement of next friend.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor. 20

**O.XXX r. 9.**

Removal of next friend.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor, or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or during the pendency of the suit ceases to reside within the Protectorate, 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. 25 30

(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. 35 40

**O.XXX r. 10.**

Stay of proceedings on removal etc., of next friend.

10. (1) On the retirement, removal, or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place. 45

(2) Where the advocate of such a minor omits, within a reasonable time, 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. 50

**O.XXX r. 11.**

Retirement, removal, or death of guardian for the suit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies, or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place. 55

**O.XXX r. 12.**

Course to be followed by minor plaintiff or applicant on attaining majority.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application. 60

(2) Where he elects to proceed with the suit or application he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read thenceforth thus:—

“A.B. late a minor by C.D. his next friend, but now having attained majority”.

(4) Where he elects to abandon the suit or application he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*; but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

O.XXX r. 13.

10 13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Where minor co-plaintiff attaining majority desires to repudiate suit.

15 (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.

20 (4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

O.XXX r. 14.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by a next friend be dismissed on the ground that it was unreasonable or improper.

Unreasonable or improper suit.

25 (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.

O.XXX r. 15.

30 15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the Court on enquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Application of rules to persons of unsound mind.

## ORDER XXXI.

### SUITS BY PAUPERS.

40 1. Subject to the following provisions, any suit may be instituted by a pauper.

O.XXXI. r. 1.

Suits may be instituted in *forma pauperis*.

*Explanation.*—A person is a 'pauper' when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit.

45 2. Every application for permission to sue as a pauper shall contain the particulars required in regard to complaints in suits, together with a statement that he is unable to pay the fee prescribed in such suit, and the whole shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

O.XXXI r. 2.

Contents of application.

50 3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person unless the applicant is exempted from appearance in Court by section 78, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

O.XXXI r. 3.

Presentation of application.

60 4. 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.

O.XXXI r. 4.

Examination of applicant.

## O.XXXI r. 5.

Rejection of application.

5. The Court shall reject an application for permission to sue as a pauper

(a) where it is not framed and presented in the manner prescribed in rules 2 and 3, or

(b) where the applicant is not a pauper, or 5.

(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 10.

(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.

## O.XXXI r. 6.

Procedure if application admitted.

6. Where the application is granted, it shall be deemed the plaintiff in the suit, and the suit shall proceed in all other respects 15 as a suit instituted in the ordinary manner except that the plaintiff shall not be liable to pay any Court fee.

## O.XXXI r. 7.

Dispaupering.

7. The Court may, on the application of the defendant or of the Attorney General, of which seven days clear notice in writing has been given to the plaintiff, order the plaintiff to be dis- 20 pauperised

(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. 25.

## O.XXXI r. 8.

Costs where pauper succeeds.

8. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of the Court fees which would have been 30 paid by the plaintiff if he had not been permitted to sue as a partner; such amount shall be recoverable by the Court from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

## O.XXXI r. 9.

Procedure where pauper fails.

9. Where the plaintiff fails in the suit, or is dispauperised, 35 or where the suit is withdrawn or dismissed 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. 40.

## O.XXXI r. 10.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

10. 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 45 any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

## O.XXXI r. 11.

Costs.

11. The costs of an application for permission to sue as a pauper and of an enquiry into pauperism shall be costs in the suit.

## ORDER XXXII.

50.

## SUITS RELATING TO MORTGAGES OF IMMOVEABLE PROPERTY.

## O.XXXII r. 1.

Parties to suits for foreclosure, sale, and redemption.

1. Subject to the provisions of this Ordinance, 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. 55.

*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.

## O.XXXII r. 2.

Preliminary decree in foreclosure suit.

2. In a suit for foreclosure, if the plaintiff succeeds, the 60 Court shall pass a decree

(a) ordering that an account be taken of what will be due to the plaintiff for the principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, 65.

(b) declaring the amount so due at the date of such decree, and directing

- (c) that, if the defendant pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage, and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, but
- (d) that, if such payment is not made on or before the day to be fixed by the Court, the defendant shall be debarred from all right to redeem the property.

3. (1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree

- (a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,
- (b) ordering him to re-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 such payment is not made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be 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:

Provided that the Court may upon good cause shown, and upon such terms (if any) as it thinks fit from time to time, postpone the day fixed for such payment.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a), (b), and (c) of rule 2, and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court as applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

(2) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff or of any person interested either in the mortgage money or in 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 sale and to secure the performance of the terms.

5. (1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree

- (a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,
- (b) ordering him to re-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 such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with as is mentioned in rule 4.

O.XXXII r. 3.  
Final decree  
in foreclosure  
suit.

O.XXXII r. 4.  
Preliminary  
decree in suit  
for sale.

Power to  
decree sale in  
foreclosure suit.

O.XXXII r. 5.  
Final decree  
in suit for sale.



## O.XXXII r. 6.

Recovery of  
balance due  
on mortgage.

6. Where the net proceeds of any such sale are found to be insufficient to pay the amount due to the plaintiff, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such amount.

## O.XXXII r. 7.

Preliminary  
decree in redemp-  
tion suit.

7. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree

(a) ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or 10

(b) declaring the amount so due at the date of such decree and directing

(c) that, if the plaintiff pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he 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 free from the mortgage and from all incumbrances 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, if necessary, put the plaintiff in possession of the property, but 15 20

(d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold. 25

## O.XXXII r. 8.

Final decree  
in redemption  
suit.

8. (1) Where on or before the day fixed the plaintiff pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree 30

(a) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required, 35

(b) ordering him to re-transfer 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 such payment is not so made, and the mortgage is not simple or usufructuary, the Court shall, on application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property, and also, if necessary, ordering the plaintiff to put the defendant in possession of the property. 40 45

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the Court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same: 50 55

Provided that the Court may, upon good cause shown, and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment.

## O.XXXII r. 9.

Decree where  
nothing is found  
due or where  
mortgage has  
been overpaid.

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant, or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property. 60 65

10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment.

O.XXXII r. 10.  
Costs of mortgagee subsequent to decree.

11. Where property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclosure the rights of those that are posterior to himself and of the mortgagor.

O.XXXII r. 11.  
Right of mesne mortgagee to redeem and foreclose.

12. Where any property, the sale of which is directed under this Order, is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

O.XXXII r. 12.  
Sale of property subject to prior mortgage.

13. (1) Such proceeds shall be brought into Court and applied as follows:—

O.XXXII r. 13.  
Application of proceeds.

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, 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 Indian Transfer of Property Act 1882.

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for the sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

O.XXXII r. 14.  
Suit for sale necessary for bringing mortgaged property to sale.

15. All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the Indian Transfer of Property Act 1882.

O.XXXII r. 15.  
Charges.

## ORDER XXXIII.

### INTERPLEADER.

1. In every suit of interpleader the suit shall, in addition to the other statements necessary for complaints, state

O.XXXIII. r. 1.  
Plaint in interpleader suit.

(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;

(c) that there is no collusion between the plaintiff and any of the defendants.

2. Where the thing claimed is capable of being paid into Court, or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

O.XXXIII r. 2.  
Payment of thing claimed into Court.

## O.XXXIII r. 3.

Procedure where  
defendant is  
suing plaintiff.

3. Where any of the defendants in an interpleader suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but, if and in so far as they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit. 5

## O.XXXIII r. 4.

Procedure at  
first hearing.

4. (1) At the first hearing the Court may 10  
(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. 15  
(2) Where the Court finds that the admission of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.  
(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct 20  
(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. 25

## O.XXXIII r. 5.

Agents and  
tenants may not  
institute inter-  
pleader suits.

5. Nothing in this order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

*Illustrations.*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader suit against A and C.  
(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C. 40

## O.XXXIII r. 6.

Charge for  
plaintiff's costs.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

## ORDER XXXIV.

## SPECIAL CASE.

## O.XXXIV. r. 1.

Power to state  
case for Court's  
opinion.

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question, 50  
(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or  
(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or 55  
(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. 60

## O.XXXIV r. 2.

Where value  
of subject-matter  
must be stated.

2. Where the agreement is for the delivery of any property, or for the doing or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement. 65

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

O.XXXIV r. 3.

Agreement to be filed and registered as suit.

(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.

O.XXXIV r. 4.

Parties to be subject to Court's jurisdiction:

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

O.XXXIV r. 5.

Hearing and disposal of case.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Ordinance shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them,

(b) that they have a *bona fide* interest in the question stated therein, and

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

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

## ORDER XXXV.

## SUMMARY PROCEDURE ON SPECIALLY ENDORSED PLAINT.

O.XXXV r. 1.

Application of order.

1. This Order shall apply only to

(a) the High Court,

(b) the Courts of Resident Magistrates.

O.XXXV r. 2.

Special endorsement.

2. All suits where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A) upon a contract, express or implied (as, for instance, on a bill of exchange, hundi, promissory note or cheque, or other simple contract debt); or (B) on a bond or contract under Seal for payment of a liquidated amount of money; or (C) on a guaranty, whether under Seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (D) on a trust; or (E) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant; may at the option of the plaintiff be instituted by presenting a plaint in the form prescribed endorsed "Summary Procedure, Order XXXV" and the summons shall be issued in such form as may be from time to time prescribed.

O.XXXV r. 3.

3. In any case in which a summons has been issued on a plaint endorsed as provided in rule 2, 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 for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

O.XXXV r. 4.

Defendant showing defence on merits to have leave to appear.

(1) The Court shall, upon application by the defendant within ten days of the date of service of the summons, give leave to appear and 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.

O.XXXV r. 5.  
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, 5 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.

O.XXXV r. 6.  
Power to order bill, etc., to be deposited with officer of Court.

In any proceeding under this Order the Court may order the bill, hundi, or note, on which the suit is founded to be forth- 10 with 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.

O.XXXV r. 7.  
Recovery of cost of noting 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 15 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.

O.XXXV r. 8.  
Procedure in suits.

Save as provided by this Order, the procedure in suits 20 hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

## ORDER XXXVI.

### ARREST AND ATTACHMENT BEFORE JUDGMENT.

O.XXXVI r. 1.  
Where defendant may be called upon to furnish security for appearance.

1. Where at any stage of a suit, other than a suit of the 25 nature referred to in section 12, 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, 30

(i) has absconded or left the local limits of the jurisdiction of the Court; or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of 35 the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave the Protectorate 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 defen- 40 dant 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 45 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.

O.XXXVI r. 2.  
Security.

(1) Where the defendant fails to show such cause the 50 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 the decree that may be passed against him in the suit, or make such order as it thinks 55 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. 60

O.XXXVI r.3.  
Procedure on application by surety to be discharged.

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made the Court shall summon the defendant to appear, or if it thinks fit, may issue a warrant 65 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.

5 Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit, or, where a decree is passed against the defendant, until the decree has been satisfied.

10 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.

15 5. (1) Where at any stage of a suit the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

20 (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  
25 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.

30 (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.

35 6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit,  
40 be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

45 7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner  
50 hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security  
55 for the costs of the attachment, or when the suit is dismissed.

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  
60 execution of such decree.

11. Where property is under attachment by virtue of the provisions of this order, and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of  
65 the property.

O.XXXVI r. 4.  
Procedure where defendant fails to furnish security or find fresh security.

O.XXXVI r. 5.  
Where defendant may be called upon to furnish Security for production of property.

O.XXXVI r. 6.  
Attachment where cause not shown or security not furnished.

O.XXXVI r. 7.  
Mode of making attachment.

O.XXXVI r. 8.  
Investigation of claim to property attached before judgment.

O.XXXVI r. 9.  
Removal of attachment when security furnished or suit dismissed.

O.XXXVI r. 10.  
Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.

O.XXXVI r. 11.  
Property attached before judgment not to be re-attached in execution of decree.

## ORDER XXXVII.

## TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

## XXXVII. r. 1.

Cases in which temporary injunction may be granted.

1. Where in any suit it is provided 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.

## O.XXXVII r. 2.

Injunction to restrain repetition or continuance of breach.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury 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 an enquiry as to damages the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.

(3) In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

## O.XXXVII r. 3.

Before granting injunction Court to direct notice to opposite party.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

## O.XXXVII r. 4.

Order for injunction may be discharged, varied, or set aside.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court on application made thereto by any party dissatisfied with such order.

## O.XXXVII r. 5.

Injunction to corporation binding on its officers.

5. An injunction directed to a corporation is binding not only on the corporation itself but also on all members and officers of the corporation whose personal action it seeks to restrain.

## O.XXXVII r. 6.

Power to order interim sale.

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for other just and sufficient cause it may be desirable to have sold at once.

## O.XXXVII r. 7.

Detention, preservation, inspection, etc., of subject-matter of suit.

7. (1) The Court may on the application of any party to a suit, and on such terms as it thinks fit,

(a) make an order for the detention, preservation, or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

8. An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time 5 after institution of the suit.

9. 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 10 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.

O.XXXVII r. 8.

Application for such order to be after notice.

O.XXXVII r. 9.

Deposit of money, etc., in Court.

#### ORDER XXXVIII.

##### APPOINTMENT OF RECEIVERS.

15 1. (1) Where it appears to the Court to be just and convenient, the Court may by order

O.XXXVIII. r. 1.

Appointment of receivers.

(a) appoint a receiver of any property, whether before or after decree;

20 (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

25 (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.

30 (2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

2. The Court may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

O.XXXVIII r. 2.

Remuneration.

35 3. Every receiver so appointed shall

O.XXXVIII r. 3.

Duties.

(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

40 (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.

45 4. Where a receiver

O.XXXVIII r. 4.

Enforcement of receiver's duties.

(a) fails to submit his accounts at such periods and in such form as the Court directs; or

(b) fails to pay the amount due from him as the Court directs, or

50 (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, 55 and shall apply the balance (if any) to the receiver.

#### ORDER XXXIX.

##### APPEALS FROM ORIGINAL DECREES.

1. (1) Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the Court or to such officer as it appoints in 60 that behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the High Court dispenses therewith) of the judgment on which it is founded.

O.XXXIX. r. 1.

Form of appeal. What to accompany memorandum.

65 (2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.



O.XXXIX r. 2.  
Grounds which  
may be taken  
in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by 5 leave of the Court under this rule:

Provided that the High Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground. 10

O.XXXIX r. 3.  
Rejection or  
amendment of  
memorandum.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall 15 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.

O.XXXIX r. 4.  
One of several  
plaintiffs or  
defendants may  
obtain reversal  
of whole  
decree where  
it proceeds  
on ground com-  
mon to all.

4. Where there are more plaintiffs or more defendants than 20 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 High Court may reverse or vary the decree in favour of all the plaintiffs or defendants as the case 25 may be.

O.XXXIX r. 5.  
Stay by  
High Court.

5. (1) An appeal to the High Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the High Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been pre- 30 ferred from the decree; but the High Court may for sufficient cause order stay of execution of such decree.

Stay by Court  
which passed  
decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on 35 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 40 for stay of execution unless the order is made;

(b) that the application has been made without unreason- able delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be 45 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.

O.XXXIX r. 6.  
Security in  
case of order  
for execution  
of decree  
appealed from.

6. (1) Where an order is made for an execution of a decree from which an appeal is pending the Court which passed the 50 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 High Court, or the High 55 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 immove- able property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judg- 60 ment-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.

O.XXXIX r. 7.  
No security to  
be required from  
the Government.

7. No such security as is mentioned in rules 5 and 6 shall be required from the Government or where the Government has 65 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.

8. The powers conferred by rules 5 and 6 shall be exercisable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

O.XXXIX r. 8.

Exercise of powers in appeal from order made in execution of decree.

9. (1) Where a memorandum of appeal is admitted, the High 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.

O.XXXIX r. 9.

Registry of memorandum of appeal.

(2) Such book shall be called the Register of Appeals.

O.XXXIX r. 10.

10. (1) The High 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 both:

High Court may require appellant to furnish security for costs.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of the Protectorate, and is not possessed of any sufficient immoveable property within the Protectorate 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.

O.XXXIX r. 11.

Day for hearing appeal.

1. The High Court shall fix a day for hearing the appeal, which 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.

O.XXXIX r. 12.

High Court to give notice to Court whose decree appealed from.

12. (1) When a memorandum of appeal is admitted, the High Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) The Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the High Court.

(3) Either party may on application and at his own expense obtain copies of any such papers as aforesaid.

O.XXXIX r. 13.

Service of notice of day for hearing appeal.

13. Notice of the day fixed under rule 11 shall be served on the respondent or on his advocate 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.

O.XXXIX r. 14.

Contents of notice.

14. 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*.

O.XXXIX r. 15.

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.

O.XXXIX r. 16.

Dismissal of appeal for appellant's default.

16. (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) Where the appellant appears, and the respondent does not appear, the appeal shall be heard *ex parte*.

O.XXXIX r. 17.

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

17. 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.

## O.XXXIX r. 18.

Re-admission  
of appeal  
dismissed for  
default.

18. Where an appeal is dismissed under rule 16 or rule 17, the appellant may apply to the High 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. 5

## O.XXXIX r. 19.

Power to  
adjourn hearing  
and direct  
persons appear-  
ing interested  
to be made  
respondents.

19. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent. 10

## O.XXXIX r. 20.

Re-hearing on  
application of  
respondent  
against whom  
*ex parte* decree made.

20. Where an appeal is heard *ex parte*, and judgment is pronounced against the respondent, he may apply to the High 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. 15 20

## O.XXXIX r. 21.

Upon hearing  
respondent may  
object to  
decree as  
if he had  
preferred sepa-  
rate appeal.

21. (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 High Court within one month from the date of service on him or his advocate of notice of the day fixed for hearing the appeal, or within such further time as the High Court may see fit to allow. 25

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto. 30

(3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection, or his advocate, of having received a copy thereof, the High Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his advocate at the expense of the respondent. 35

(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. 40

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule. 45

## O.XXXIX r. 22.

Remand of  
cases by High  
Court.

22. 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 High Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand. 50 55

## O.XXXIX r. 23.

Where evi-  
dence on record  
sufficient, High  
Court may  
determine case  
finally.

23. Where the evidence upon the record is sufficient to enable the High Court to pronounce judgment, the High 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 High Court proceeds. 60

24. 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 High Court essential to the right decision of the suit upon the merits, the High 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 High Court together with its finding thereon and the reasons therefor.

O.XXXIX r. 24.  
Where High Court may frame issues and refer them for trial to Court whose decree appealed from.

25. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within time to be fixed by the High Court, present a memorandum of objections to any finding.  
(2) After the expiration of the period so fixed for presenting such memorandum the High Court shall proceed to determine the appeal.

O.XXXIX r. 25.  
Finding and evidence to be put on record. Objections to finding.

26. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the High Court.

O.XXXIX r. 26.  
Production of additional evidence in High 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 High 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 High 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 the High Court, the Court shall record the reason for its admission.

O.XXXIX r. 27.  
Mode of taking additional evidence.

27. Wherever additional evidence is allowed to be produced, the High 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 High Court.

O.XXXIX r. 28.  
Points to be defined and recorded.

28. Where additional evidence is directed or allowed to be taken the High Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

29. The High Court, after hearing the parties or their advocates and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their advocates.

O.XXXIX r. 29.  
Judgment when and where pronounced.

30. (1) The judgment of the High Court shall be in writing and shall state

O.XXXIX r. 30.  
Contents, date, and signature of judgment.

(a) the points for determination;  
(b) the decision thereon;  
(c) the reasons for the decision; and  
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

(2) The judgment shall be dated with the date of pronouncement and shall be signed on or before that date by the Judge by whom it was written.

(3) When the Court consists of more Judges than one, each of such Judges shall sign a separate judgment, and the decree of the Court shall be drawn in accordance with the findings of the majority.

(4) When the Court is equally divided in opinion the appeal shall be dismissed.

O.XXXIX r. 31.  
What judgment may direct.

31. 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 High Court may pass a decree or make an order accordingly.

## O.XXXIX r. 32.

Power of  
High Court  
on appeal.

32. The High 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 objections. 5

## 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. 10

## O.XXXIX r. 33.

Date and  
contents of  
decree.

33. (1) The decree of the High 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. 15

(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. 20

(4) The decree shall be signed and dated by the Judge by whom it was passed or by such officer as the Court may appoint.

## O.XXXIX r. 34.

Copies of  
judgment and  
decree to be  
furnished to  
parties.

34. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the High Court and at their expense. 25

## O.XXXIX r. 35.

Certified copy  
of decree to  
be sent to  
Court whose  
decree appealed  
from.

35. A copy of the judgment and of the decree, certified by the High 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 High Court shall be made in the register of civil suits. 30

## O.XXXIX r. 36.

Leave to  
appeal from  
appellate decree  
of High Court  
when granted.

36. Leave to appeal to the Court of Appeal for Eastern Africa as provided in section 68 shall not be granted unless

(a) the Court is of opinion that the point or points in issue involve a matter of great public importance or a question of law on which it is desirable to refer the matter to the Court of Appeal, and 35

(b) application for leave to appeal is made at the time when judgment is pronounced. 40

## ORDER XL.

## APPEALS FROM ORDERS.

## O. XL r 1.

Appeals from  
Orders.

1. An appeal shall lie from the following orders under the provisions of section 71, namely:—

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court; 45

(b) an order under rule 18 of Order VIII pronouncing judgment against a party;

(c) an order under rule 9 of Order IX rejecting an application for an order to set aside the dismissal of a suit; 50

(d) an order under rule 13 of Order IX rejecting an application for an order to set aside a decree passed *ex parte*;

(e) an order under rule 17 of Order X;

(f) an order under rule 10 of Order XV for the attachment of property; 55

(g) an order under rule 20 of Order XV pronouncing judgment against a party;

(h) an order under rule 29 of Order XX on an objection to the draft of a document or of an endorsement;

(i) an order under rule 65 or rule 83 of Order XX setting aside or refusing to set aside a sale; 60

- (j) an order under rule 9 of Order XXI refusing to set aside the abatement or dismissal of a suit;
- (k) an order under rule 10 of Order XXI giving or refusing to give leave;
- 5 (l) an order under rule 3 of Order XXII recording or refusing to record an agreement, compromise, or satisfaction;
- (m) an order under rule 2 of Order XXIV rejecting an application for an order to set aside the dismissal of a suit;
- (n) an order under rule 3 or rule 8 of Order XXXII refusing to extend the time for the payment of mortgage money;
- 10 (o) orders in interpleader suits under rule 3, rule 4, or rule 6 of Order XXXIII;
- (p) an order under rule 2, rule 3, or rule 6 of Order XXXVI;
- 15 (q) an order under rule 1, rule 2, rule 4, rule 9 of Order XXXVII;
- (r) an order under rule 1 or rule 4 of Order XXXVIII;
- (s) an order of refusal under rule 18 of Order XXXIX to re-admit or under rule 20 to re-hear and appeal;
- 20 (t) an order under rule 4 of Order XLII granting an application for review.

## ORDER XLI.

## PAUPER APPEALS.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject in all matters, including the presentation of such application, to the provisions relating to suits by paupers in so far as those provisions are applicable:
- 25 30

O.XLI r. 1.  
Who may  
appeal as  
pauper.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law.

Procedure on  
application for  
admission of  
appeal.

2. The inquiry into pauperism of the applicant may be made either by the High Court or under the orders of the High Court by the Court from whose decision the appeal is preferred:
- 35

O.XLI r. 2.  
Inquiry into  
pauperism.

- 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 enquiry in respect of his pauperism shall be necessary, unless the High Court sees cause to direct such enquiry.
- 40

## ORDER XLII.

## REVIEW.

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, or
- (b) by a decree or order from which no appeal is hereby allowed,
- 50 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 the order made, or on account of some mistake or error apparent on the face of the record, or
- 55 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.

O.XLII r. 1.  
Application for  
review of  
judgment.

- (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.
- 60

## O.XLII r. 2.

To whom  
applications for  
review may be  
made.

2. An application for review of a decree order of a 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 in the High Court by another Judge and in a subordinate Court by his successor.

## O.XLII r. 3.

Form of  
applications for  
review.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

## O.XLII r. 4.

Application  
where rejected.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application  
where granted.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made without strict proof of such allegation.

## O.XLII r. 5.

Order of rejection not appealable.  
Objections to order granting application.

5. (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),

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objections 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.

## O.XLII r. 6.

Registry of application granted, and order for re-hearing.

6. 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.

## O.XLII r. 7.

Bar of certain applications.

7. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

## ORDER XLIII.

## MISCELLANEOUS.

## O.XLIII r. 1.

Process to be served at expense of party issuing,

1. (1) Every process issued under this Ordinance shall be served at the expense of the party on whose behalf it is issued unless the Court otherwise directs.

Costs of service.

(2) The court fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

## O.XLIII r. 2.

Orders and notices how served.

2. All orders, notices, and documents required by this Ordinance to be given to or served on any person shall be served in the manner provided for the service of summons.

3. The forms used for the purposes of this Ordinance shall, with such variation as the circumstances of each case may require, be those in use at the commencement of this Ordinance, and such other forms as may be from time to time approved by the High Court.

O.XLIII r. 3.  
Use of Forms.

4. Any special rules of procedure not contained in this Schedule which have been or may be made by the High Court shall, where they conflict with the rules in this Schedule, prevail and be deemed to govern the procedure in the matter therein mentioned.

O.XLIII r. 4.  
Rules of procedure not contained in Schedule.

1. Wherever in the Ordinance or in the rules thereunder it is provided that any act or thing may be done by such officer as the Court may appoint that act or thing may be done by the Registrar of the Court or by a District or Deputy Registrar.

Registrar to be ministerial Officer.

2. (a) In uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the Registrar of the Court.

Judgment, when may be entered by Registrar.

(b) judgment shall in all such cases be entered in open Court.

3. Formal orders for attachment and sale of property in execution of a decree of the High Court may be made by the Registrar, but in the event of any objection being taken to the proceedings thereunder, all further proceedings shall be before a Judge.

Execution may be ordered by Registrar.

4. For the purposes of the rules 2 and 3 a Registrar shall be deemed to be a Civil Court.

Registrar a Civil Court.

## THE SECOND SCHEDULE.

### ARBITRATION.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

Schedule II.  
Parties to suit may apply for order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Schedule II.  
Appointment of arbitrator.

(1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

Schedule II.  
Order of reference.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Schedule, deal with such manner in the same suit.

(1) Where the reference is to two or more arbitrators provision shall be made in the order for a difference of opinion among the arbitrators

Schedule II.  
Where reference is to two or more, order to provide for difference of opinion.

(a) by the appointment of an umpire; or  
(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or  
(c) by empowering the arbitrators to appoint an umpire; or  
(d) otherwise as may be agreed between the parties, or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.



## Schedule II.

Power of Court  
to appoint  
arbitrator in  
certain cases.

5. (1) In any of the following cases, namely:—

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire

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(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves the Protectorate in circumstances showing that he will probably not return at an early date, or

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(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any party may serve the other or the arbitrators as the case may be with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further times as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire, or make an order superseding the arbitration, and in such case shall proceed with the suit.

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## Schedule II.

Power of arbitrator or umpire appointed under paragraph 4 or 5.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

## Schedule II.

Summoning witnesses and default.

7. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

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(2) Persons not attending in accordance with such process or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

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## Schedule II.

Extension of time for making award.

8. Where the arbitrators or umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

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## Schedule II.

Where umpire may arbitrate in lieu of arbitrators.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators

(a) if they have allowed the appointed time to expire without making an award, or

45

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

## Schedule II.

Award to be signed and filed.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

50

## Schedule II.

Statement of special case by arbitrators or umpire.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and form part of the award.

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## Schedule II.

Power to modify or correct award.

12. (1) The Court may, by order, modify or correct an award,

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(a) where it appears that a part of the award is upon a matter not referred to arbitration, and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

- 5 (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Schedule II.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Order as to costs of arbitration.

- 10 14. The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrator or umpire upon such terms as it thinks fit,

Schedule II.

Where award or matter referred to arbitration may be remitted.

- 15 (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;

(b) where the award is so indefinite as to be incapable of execution;

- 20 (c) where an objection to the legality of the award is apparent upon the face of it.

Schedule II.

- 15 (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to re-consider it. But  
25 no award shall be set aside except on one of the following grounds namely:—

Grounds for setting aside award.

- 30 (a) corruption or misconduct of the arbitrator or umpire;  
(b) either party having been found guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;  
(c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

- 35 (2) Where an award becomes void, or is set aside under clause (1), the Court shall make an order superseding the arbitration, and in such case shall proceed with the suit.

Schedule II.

Judgment to be according to award.

- 40 16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

- 45 (2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

- 50 17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

Application to file in Court agreement to refer to arbitration.

- 55 (2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

- 60 (3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement, other than the applicants, requiring such parties to show cause within the time specified in the notice why the agreement should not be filed.

- 65 (4) Where no sufficient cause is shown, the Court shall order the agreement to be filed and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement, or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration.

18. Where any party to an agreement to refer to arbitration, or any person claiming under him institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases 5 where issues are settled at or before such settlement, apply to the Court to stay the suit, and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted, and still 10 remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under para. 17

19. The foregoing provisions, as far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court 15 under that paragraph, and to the award, and to the decree following thereon.

Filing award in matter referred to arbitration without intervention of Court.

20. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any 20 Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. 25

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award.

21. (1) Where the Court is satisfied that the matter has been 30 referred to arbitration, and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed, and shall proceed to pronounce judgment according to the award. 35

(2) Upon the judgment so pronounced, a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

### THE THIRD SCHEDULE.

(See Section 97).

#### ENACTMENTS REPEALED.

Year.	No.	Short Title.	Extent of Repeal.
1882	14	The Indian Code of Civil Procedure as applied to the Protectorate	The whole Act
1907	13	The Courts Ordinance	